Terms and Conditions of Sale, Delivery and Payment

1. Scope of Validity
1.1. The following terms and conditions apply to all of our quotations and contracts regarding terms of delivery, as well as to the sales of software. The customer may only have duplicate printouts of user documentation after they have taken precedence over other statements which have not been expressly offered or confirmed by ourselves. Any of the buyer’s terms and conditions of sale which deviate from our own have no validity whatsoever.

1.2. The terms and conditions of software use apply to the provision of software by wenglor sensoric GmbH ("wenglor") to you as an end customer and a contractual partner to "wenglor" ("Customer"). These terms and conditions of software use regulate the provision of software as part of a product purchased from wenglor against payment, as well as the provision of demo software insofar as this is expressly provided for in section 3.11, "Demo Software".

1.3. Otherwise, the laws of the Federal Republic of Germany shall apply to legal relationships between ourselves and the buyer. Stipulations set forth in standardized legislation regarding international procurement of moveable property and the conclusion of international sales contracts do not apply, insofar as they deviate from our terms and conditions.

2. Quotations and the Conclusion of Contracts
2.1. All of our quotations are subject to confirmation.

2.2. Placed orders are only binding for us to the extent that they have been confirmed in writing by ourselves, or executed by means of immediate delivery and issuance of invoice. Collateral agreements and changes must be agreed to in writing.

2.3. If goods are shipped with sale subject to the approval of the buyer (sample shipment), the goods are deemed approved by the buyer in accordance with paragraph 455, sentence 2, of the BGB (German Civil Code) if he does not reject the goods and return them within a period of 4 weeks. The buyer bears the cost of return shipment, and we are entitled to invoice the buyer for costs incurred for the repair of goods which we delivered to him in flawless condition.

2.4. We reserve the right to correct errors and omissions in our order confirmations and invoices.

2.5. We reserve the right to implement minor technical and design changes within the scope of customary quantity and quality deviations which are not unreasonable for the buyer. In particular if the function and the value of the ordered goods are not diminished.

2.6. Insofar as significant price increases or shipping delays occur due to such changes which are disadvantageous for the buyer, he is entitled to withdraw from the contract. However, this does not apply if the error or omission was obvious to him.

2.7. We retain all rights of ownership, copyrights and utilization rights to price quotations, drawings and other documents; these may not be made accessible to any third parties and must be returned to us upon request, if the contract is not concluded or if it is prematurely terminated.

3. Software Use
3.1. Definitions
Insofar as not otherwise expressly stipulated, the terms listed below have the following meanings in these terms and conditions of software use (including the definitions themselves).

User documentation: The textual and technical description of the software available to the customer which is valid before conclusion of the contract (e.g. instructions for use, user manual, documentation).

Demo software: Software made available to the customer for download free of charge by wenglor with a limited scope of functions as compared with the corresponding software which is available for purchase.

Download: A means of transmitting data via the Internet from a server to the customer’s computer.

Licensed materials: The software itself along with associated user documentation.

Object code: Software in a format which can only be read by machines and is suitable for the execution of an executable machine code.

Parties: wenglor and the customer.

Source code: The software’s humanly legible source text written in a programming language.

Software: Software sold or made available to the customer including any changes or improvements provided to the customer by wenglor.

3.2. License
3.2.1. wenglor grants the customer the right to use the software in accordance with these terms and conditions of software use (including the definitions themselves) in order to use the software for the purpose of obtaining benefits from the software which goes above and beyond these terms and conditions of software use is prohibited.

3.2.2. For the duration of the validity of any protective rights, the customer is granted the non-exclusive right to use the software for operation of the wenglor products specified in the user documentation for his own purposes. Use of the software includes any duplication of the software by means of data storage, loading, running or display for the purpose of operating the products specified in the user documentation; any further duplication of the software is excluded with the exception of the preparation of a backup copy (see also point 3.3, "Backup Copy"). In particular duplication of the software for the purpose of forwarding to third parties either free of charge or for a fee, as well as use of the software for the purposes of any third parties, is excluded.

3.2.3. The customer is not entitled to grant any rights to any third party with regard to the rights to the software which have been granted to him. Nor may the customer sublicense rights to the software, which have been granted to him, to any third party. Section 3.2.2 further applies to all uses and combinations of software use remains unaffected by this.

3.2.4. The customer is not entitled to modify or edit the software. Reprinting of the object code is only permissible in accordance with the legally stipulated limitations set forth in paragraph 69f of German copyright law (UHG). Any other retransliteration is prohibited. Customer rights specified in paragraph 69f, sections 2 and 3, of German copyright law (UHG) remain unaffected by this.

3.2.5. If the customer is provided with software which is subject to open source software conditions, wenglor shall provide the customer with or offer him the source code upon request, insofar as these conditions of use provide for its surrender.

3.3. Backup Copy
Software use in accordance with the contract includes the preparation of a backup copy. The backup copy may only be used for security purposes. The customer is required to store the backup copy at a secure location which is inaccessible to third parties.

3.4. User Documentation
The software is provided with user documentation in printed or electronic format on machine-readable data storage media or as a download. This copy is only permitted for duplicate printed user documentation after obtaining previous written consent from wenglor. Sections 3.2 and 3.3 of the terms and conditions of software use apply correspondingly to the use of user documentation in electronic format.

3.5. Protection of Licensed Materials
The customer is required to observe proprietary notices such as copyright notices and the reservation of all rights to the software, even if the software is assigned to the customer. Neither the terms and conditions of software use, wenglor’s licensors retain all rights to licensed materials, including all copies or partial copies prepared by the customer. Any property owned by the customer such as data storage media and hardware remains unaffected by this.

3.6. Defective Title
The customer shall notify wenglor in writing without delay in the event that claims are made against him due to the violation of proprietary rights due to licensed materials.

If the customer is prevented from using licensed materials due to the proprietary rights of any third party, customer shall notify us, at all times and completely and in a scope which is reasonable for the customer, either to procure corresponding licenses from the third party or to modify or exchange the licensed materials such that no longer infringes upon the proprietary rights of the third party.

wenglor is not obligated to furnish any warranty of title insofar as violation of the proprietary rights of any third party is based on the fact that the customer has altered or edited the licensed materials, or that the customer uses the software in combination with hardware or computer programs not supplied by wenglor, or in violation of the user documentation. This also applies in the event that the claims of the third party are based on the customer’s use of the licensed materials after wenglor has informed the customer that use must be discontinued due to a third party claim.

3.7. Quality Defects
3.7.1. The conditions of use of the software are based on the user documentation. The customer is solely responsible for selecting the software and the products, as well as for the results to be obtained by means of their use.

3.7.2. wenglor guarantees suitability of the software, in the version supplied to the customer, for its contractual agreement with the user documentation. In the case of significant deviation of the software from the user documentation, wenglor is entitled to remediation, and is obligated to rectify such defects insofar as this does not involve unreasonable expense.

wenglor does not succeed in eliminating substantial errors in the software, the customer is entitled to withdraw from the contract.

3.7.3. wenglor shall be required to pay for these services at the rates which are customary for wenglor at the point in time that such services are rendered.

3.7.4. The above stipulated warranty limitations do not apply in cases in which wenglor offers a corresponding guarantee of the quality of the licensed materials or has fraudulently concealed defects.

3.8. Statute of Limitations
Guarantee claims come under the statute of limitations – subject to the stipulations in the following clause and section 3.7.5 of the terms and conditions of software use – one year after delivery or download of the software, as well as user documentation. However, customer claims for compensation of damages or reimbursement of expenses remain unaffected by the stipulations set forth above and come under the statute of limitations in accordance with legal dictates.

3.9. Forwarding of Licensed Materials
3.9.1. The customer is entitled to surrender the licensed materials, along with a copy of these terms and conditions of software use, to a third party on the condition that the third party undertakes to adhere to the restrictions specified in these terms and conditions of software use when using the software. The third party has no right to forward licensed materials does not include the forwarding of altered or edited versions of the licensed materials.

3.9.2. Upon forwarding the licensed materials in accordance with the prerequisites set forth in section 3.10.1, the customer shall also forward the license to the third party when the third party makes use of the software in accordance with these terms and conditions of software use. The customer’s right to use the licensed materials expires at the same time.

3.9.3. Upon forwarding the licensed materials, the customer undertakes to fully delete or otherwise destroy all copies and partial copies of the licensed materials without delay. This also applies to the backup copy in accordance with section 3.3. At the request of wenglor, the customer shall confirm the implementation of the specified measures in written form.

3.9.4. The above specified stipulations in this section (3.9) apply correspondingly to any subsequent forwarding of the licensed materials as well.

3.10. Demo Software
3.10.1. In addition to software which can be purchased for a fee, wenglor also offers demo software in the object code for downloading. The customer has no entitlement for beneficial use of demo software.

3.10.2. For the duration of the validity of any protective rights, the customer is granted the non-exclusive right to use the demo software for the wenglor products specified in the user documentation for his own purposes; any other duplication of the software is excluded with the exception of the preparation of a backup copy (see also point 3.3, "Backup Copy"). In particular duplication of the demo software for the purpose of forwarding to third parties either free of charge or for a fee, as well as use of the demo software for the purposes of any third parties, is excluded.

3.11.3. The customer is not entitled to modify or edit the demo software. Reprinting of the object code is only permissible in accordance with the legally stipulated limitations set forth in paragraph 69f of German copyright law (UHG). Any other retransliteration is prohibited. Customer rights specified in paragraph 69f, sections 2 and 3, of German copyright law (UHG) remain unaffected by this.

3.11.4. The customer is not entitled to grant any rights to any third party with regard to the rights to the demo software which have been granted to him. Nor may the customer sublicense rights to the demo software, which have been granted to him, to any third party.

3.11.5. The following stipulations from the terms and conditions of software use apply analogously to provision of the demo software: sections 3.1, 3.3, 3.5 and 3.9.

3.11. Updates
If wenglor provides software updates outside of the guarantee, this is a voluntary service. There is no entitlement to these updates.
7.3. If we are unable to deliver goods or render services on time, the buyer shall grant us an appropriate extension before asserting any rights for remedies as a result of delay. If the extension expires without result, the buyer is entitled to assert a claim for the compensation of damages in accordance with the regulations of the Austrian Commercial Code (§ 313 BGB). This claim is limited to 5% of the amount of the claim per month of delay, with a maximum of 30% of the amount of the claim.

6.3.1. If the value of the securities established on our behalf exceed our claims by a total of more than 20%, we are entitled to release the goods. Section 9.1, sentence 3, applies correspondingly with regard to extended reservation of proprietary rights.

4. In the event of an externally originating unforeseeable event over which the respective liable party has no influence, and over which the buyer is not one of the risks for which the liable party is responsible (force majeure), in particular, although not limited to, labor disputes, major stoppages at the factories of any of our suppliers, civil or military unrest, or local disturbances, the liable party is released from his obligation to perform in full and within the duration of the occurrence of force majeure. Upon cessation of the respective force majeure, the liable party must be allowed a suitable period of time to fulfill his obligation to perform. The party who has claimed the termination of the force majeure must prove its occurrence and the expected duration of such force majeure without delay.

4.5. If we are unable to deliver goods or render services on time, the buyer shall grant us an appropriate extension before asserting any rights for remedies as a result of delay. If the extension expires without result, the buyer is entitled to assert a claim for the compensation of damages in accordance with the regulations of the Austrian Commercial Code (§ 313 BGB). This claim is limited to 5% of the amount of the claim per month of delay, with a maximum of 30% of the amount of the claim.

5. Prices

5.1. All invoices specified in our quotations, price lists, order confirmations and invoices are ex works prices to which value added tax in the amount which is applicable at the time of shipment must be added.

5.2. Packaging and shipping costs are invoiced separately.

5.3. Our prices are based on the condition at the time that the contract is concluded. If our material or labor costs, any shipping costs to be borne by ourselves or the prices of our suppliers increase between the date on which the contract is concluded and the time at which goods are shipped, we are entitled to increase prices accordingly. This provision does not apply if the service is to be rendered within four months of the date on which the contract is concluded.

6. Terms of Payment

6.1. Our goods purchased and shipped are due and payable within 30 days after date of invoice, free appointed paying agent, and other invoices are due and payable immediately if not otherwise specified in writing by ourselves. The deduction of cash discounts is only permissible in accordance with conditions specified in our order confirmation or invoice, and is generally not permissible in the case of payment by means of bill of exchange. If the value of the invoices exceeds our claims by more than 20%, we are entitled to release the goods. This applies even in the event that we have assumed responsibility for other services such as shipping costs of the goods to be shipped. This applies correspondingly with regard to goods already shipped (see section 2.3).

6.2. The buyer is entitled to offset our due and payable invoice claims with counterclaims which are ready for decision, have been deemed legally binding, or which are not disputed by ourselves.

6.4. If we do not withdraw from the contract, either fully or partially, in case of unforeseeable events, provisions concerning the order no longer possible or becomes economically unacceptable, assuming that we have explained such situation to the buyer without delay after recognizing its significance. The buyer is not entitled to assert any claims for the compensation of damages due to withdrawal of this sort.

9.1. In the event of default of payment or insolvency of the buyer (see section 9.1.), we are entitled to withdraw from all contracts with the buyer who have not yet been completely executed.

11. Default of Payment

11.1. If the buyer seriously and culpably violates his contractual obligations, in particular if he is in default of payment of a considerable sum, we are entitled to demand immediate full payment in full of all outstanding claims regardless of agreed upon terms and conditions of payment or bills of exchange accepted on account of performance. This also applies if the buyer’s financial situation or liquidity takes a significant turn for the worse due to his own fault (e.g. protest of a check or a bill of exchange, delayed payments or initiation of bankruptcy proceedings).

11.2. In the event of default of payment or insolvency of the buyer (see section 9.1.), we are entitled to withdraw from all contracts with the buyer who have not yet been completely executed.

11.3. Even if we do not withdraw from the contract, we are nevertheless entitled, in the event of default of payment on the part of the buyer, to demand the return of our retained goods from him (see section 9.1), and to withhold future deliveries and to demand the return of goods already delivered if we are not paid within a suitable deadline set by ourselves without achieving the desired result.

11.4. We are entitled to demand interest at the bank's usual current account credit rates, or, at our own discretion, at a rate of 4% higher than the base interest rate of the European Central Bank as compensation for default without any special substantiation. Claims for any other compensation for default are not ruled out as a result.

12. Further Rights of Withdrawal and Liability

12.1. We are entitled to withdraw from the contract if it becomes conclusively impossible for us to complete shipment or rendering of services before transfer of risk, or if, in the case of an order for like objects, shipment of a portion of the order becomes impossible and the buyer has a justifiable interest in rejecting a partial shipment. If this is not the case, he can reduce payment correspondingly. If this impossibility occurs during a delay in accepting performance or delivery, or by fault of the buyer, his obligation to effect payment remains unaffected.

12.2. We are entitled to withdraw from the contract, either fully or partially, if, in the case of unforeseeable events, provisions concerning the order no longer possible or becomes economically unacceptable, assuming that we have explained such situation to the buyer without delay after recognizing its significance. The buyer is not entitled to assert any claims for the compensation of damages due to withdrawal of this sort.

13. Our liability is basically solely upon the stipulations set forth in these terms and conditions and compulsory legal provisions.

13. Use and Resale of the Goods

13.1. The customer is required to ensure that any third parties who, by arrangement of the customer, use the goods or commercial and technical information about them, possess suitable qualifications and training to do so, that the respective training instructions are observed by them, that they are not subject to any obligations of confidence, and that they are not authorized to dispose of retained goods in any other fashion, and in particular may not use them as a pledge or security.

14. Court of Jurisdiction

14.1. If the product is a consumer good, any disputes arising from the contractual relationship shall be settled exclusively before a competent court of law in Tettmann, Germany. This applies to liabilities on bills of exchange and checks as well. We are also in part to initiate legal action at the buyer’s location.