

**Senseca Spain, S.A.U. – General Terms and Conditions of Business.**

**1. Scope of Application and Definitions:**

1. These General Terms and Conditions of Business (“**GTC**”) shall apply exclusively to legal relations between Senseca Spain, S.A.U. (“**SENSECA**”) and customers. The GTC also apply to the sale of products of other entities within the SENSECA Group distributed by Senseca Spain, S.A. Any provisions which deviate from, contradict or supplement these GTC shall, even upon knowledge thereof, not be recognised and are hereby expressly objected to, unless expressly accepted in writing by SENSECA.

2. These GTC apply exclusively to customers acting in the course of their business or professional activity (entrepreneurs or professionals within the meaning of Article 4 of the Spanish Consumer Protection Act – Royal Legislative Decree 1/2007). SENSECA does not contract with consumers.

3. SENSECA reserves the right to change the GTCs for future orders. In this regard, please check the SENSECA website.

**2. Conclusion of Contract:**

1. The product catalogues issued by SENSECA, as well as other brochures and technical documentation do not constitute an offer to conclude a contract but rather merely an invitation to the customer to submit a written offer to SENSECA to conclude a contract.

2. Offers by SENSECA are subject to confirmation and are non-binding, unless expressly designated as binding by SENSECA. Contracts are only concluded by way of written order confirmation by SENSECA or by way of delivery. Orally issued orders shall only become effective once confirmed in writing by SENSECA. Amendments to a concluded contract must be confirmed in writing by SENSECA in order to be effective.

3. A customer order which qualifies as an offer to conclude a contract may be accepted by SENSECA within 2 weeks. Acceptance and dispatch of the ordered products shall have the same effect.

**3. Scope of performance obligation:**

1. The scope of the performance shall be determined exclusively by SENSECA’s written order confirmation. SENSECA reserves the right to make technical changes provided that the essential functionality and agreed characteristics are not materially affected.

2. SENSECA is entitled to render partial performance where this is reasonable according to the individual circumstances of the customer. The invoices issued in this regard are payable independently of the total delivery.

3. Product details and usage criteria in product catalogues, brochures and technical documentation as well as other information material provided by SENSECA to the customer and product descriptions are not to be understood as either guarantees of a particular quality of the products or as a simple agreement as to quality; such quality guarantees and quality agreements must be expressly agreed in writing.

**4. Prices / Payments / Interest on Late Payments / Set-off:**



1. All prices specified in the product catalogues, brochures and technical documentation as well as other information material issued by SENSECA are exclusive of the relevant applicable VAT or any other applicable taxes, unless expressly stated otherwise. Packaging, freight, postage, transport, insurance, requested export documentation, shipping and similar costs shall be borne by the customer unless otherwise agreed.
2. Unless fixed prices are expressly agreed, the specified prices are based on SENSECA's production costs at the time of order confirmation. In the event of unforeseeable increases in production costs that are beyond SENSECA's control, SENSECA reserves the right to increase prices accordingly where the delivery or service is scheduled more than four (4) months after contract conclusion.
3. Unless otherwise agreed in writing, all payments must be made within 30 days of the date of invoice without deduction in full to the specified payment agent.
4. In case of late payment, statutory interest under Spanish Law 3/2004 of 29 December on combating late payment in commercial transactions shall apply automatically, without need for formal notice.
5. The customer may only set off claims that are undisputed or finally adjudicated.

**5. Force Majeure:**

Neither party shall be liable for delay or failure in performance caused by events beyond its reasonable control, including but not limited to natural disasters, strikes, governmental measures, embargoes, delayed deliveries or non-delivery by suppliers of SENSECA (including intra-group suppliers of SENSECA), supply shortages, transport disruptions or similar force majeure events that affect its obligation to supply or accept the Goods, as the case may be, for the duration of and to the extent of such hindrance.

If, in consequence, delivery or acceptance is delayed by more than 30 days, either party may, to the exclusion of all further claims, withdraw from the contract in respect of the quantities affected by such delivery or acceptance hindrance without liability.

**6. Delivery and Transfer of Risk:**

1. The place of performance and fulfilment is the place from which delivery is effected. Unless otherwise agreed, delivery shall be Ex Works (Incoterms® latest version) at SENSECA's premises.
2. In the event that the customer requests that the contractual item is sent to another location, the risk of accidental loss passes to the customer upon handover of the item to the first freight carrier. This shall also apply if the customer refuses to accept the delivery. Unless agreed otherwise, SENSECA is free to select the manner of shipping. The packaging material is to be recycled or properly disposed of by the customer at its own cost. Clause 11 shall apply mutatis mutandis.
3. Delivery dates and deadlines are only binding if the contracting parties have made an express agreement to this effect. In case of doubt, delivery deadlines begin on the date of order confirmation. If there is a temporary hindrance to performance which is beyond SENSECA's control, the delivery dates and deadlines shall be extended correspondingly. This applies in particular in cases of force majeure within the meaning of Clause 5. Occurrence of delivery delay by SENSECA shall be determined in accordance with legal regulations. In any case a notice by the customer shall however be necessary.



## **7. Retention of Ownership:**

### 1. Retention of title:

SENSECA shall retain full legal title to the delivered goods (the “**Goods**”) until full and irrevocable payment of all present and future claims arising from the business relationship with the customer (the “**Secured Claims**”), irrespective of the legal grounds of such claims.

The customer shall store the Goods separately from its own goods and from those of third parties, clearly identify them as property of SENSECA, and handle them with due care. The customer shall insure the Goods at its own expense against theft, damage and loss for their full replacement value and shall provide evidence of such insurance upon request.

### 2. Prohibition of Disposal:

Until full payment of the Secured Claims, the Goods may not be pledged, transferred by way of security, or otherwise encumbered; the customer shall not take any action that may impair SENSECA’s ownership rights.

The customer shall immediately notify SENSECA in writing of any attachment, seizure, insolvency filing or any other third-party interference affecting the Goods and shall cooperate fully in protecting SENSECA’s rights.

### 3. Enforcement in Case of Default:

Where the customer is in breach of the contract, in particular in the case of non-payment of the due amount under the contract, SENSECA shall be entitled, without prejudice to any other rights:

- (i) to declare all outstanding amounts immediately due and payable;
- (ii) to withdraw from the contract; and/or
- (iii) to demand immediate return of the Goods.

Demanding return of the Goods shall not automatically constitute withdrawal from the contract unless expressly declared. SENSECA may enforce its retention of title rights without granting a grace period where legally permissible.

The customer shall grant SENSECA or its representatives access to its premises for the purpose of recovering the Goods.

### 4. Resale and Processing:

Until the time of withdrawal in accordance with (c) below, the customer is authorised to continue to sell on and/or to process the Goods which are subject to retention of ownership within the ordinary course of business. In such a case the following supplemental provisions shall apply:

#### a) Processing:

The retention of ownership shall extend to the full value of products resulting from the processing or combining of the Goods, whereby SENSECA shall remain the manufacturer. In the event that processing or combining uses third party items which are subject to ownership rights, the customer hereby transfers to SENSECA co-ownership in the proportion of the invoice value of the processed or combined contractual Goods. SENSECA hereby accepts the transfer. Otherwise, the same shall apply to the resulting product as to the Goods delivered under retention of ownership.



b) Assignment of Claims:

The customer hereby irrevocably assigns to SENSECA, as security, all claims against third parties arising from the resale of the Goods (including after processing), in the full amount of the invoice value, including VAT. SENSECA hereby accepts the assignment. SENSECA hereby accepts the assignment.

This assignment shall apply irrespective of whether the Goods are resold before or after processing.

c) Collection of Assigned Claims:

The customer shall remain authorised to redeem the claim in addition to SENSECA. SENSECA is obliged not to redeem the claim as long as the customer meets its payment obligations to SENSECA, there is no defect in its ability to perform and SENSECA does not assert ownership by exercising a right in accordance with paragraph 3.

If this is however the case, SENSECA may demand that the customer discloses the claims assigned to SENSECA and their creditors, provides all necessary information for redemption, hands over the associated documentation and informs the (third party) creditor of the assignment.

Furthermore, in such a case SENSECA shall be entitled to revoke the authorisation of the customer for the onward sale and processing of the Goods subject to retention of ownership.

d) Release of Security:

If the realisable value of the security exceeds the Secured Claims of SENSECA by more than 10%, SENSECA shall release securities at its discretion upon written request of the customer.

**8. Guarantee:**

1. The customer shall check the delivered Goods immediately upon receipt in accordance Articles 336 et seq. of the Spanish Commercial Code.

Apparent defects, quantity deviations or transport damage must be notified in writing to SENSECA within seven (7) days from delivery. Hidden defects must be notified in writing without undue delay after their discovery and, in any event, no later than seven (7) calendar days from the date of discovery.

Failure to notify defects within the above time limits shall result in the goods being deemed accepted and in conformity with the contract.

Any visible transport damage must additionally be recorded in the carrier's delivery documentation at the time of delivery.

2. In the case of duly notified defects, at its own choice and taking into consideration the interests of the customer, SENSECA shall, at its sole discretion, (i) repair the defective Goods or (ii) deliver replacement Goods free of defects.

If these measures are not successful after two (2) attempts of SENSECO to rectify, the customer may exercise its statutory rights. The right of SENSECA to refuse to rectify in accordance with the statutory requirements shall remain unaffected, subject to applicable Spanish law.

3. All guarantee claims lapse twelve (12) months after the statutory start date of the prescription period. This deadline does not apply in cases of wilful misconduct ("*dolo*"); gross negligence;



fraudulent concealment of defects; personal injury; or mandatory statutory liability. Any extension of warranty shall require express written agreement.

**9. Exchanges and Repairs outside of the Guarantee:**

1. SENSECA is not obliged to give an exchange and in the event of custom orders, exchange shall be excluded.
2. Where SENSECA however voluntarily declares that it will take back a Goods, without any obligation in accordance with guarantee regulations or any guarantee given, 20% of the purchase price shall be retained where the Good is undamaged. In the case of damaged Goods, any additional necessary repair costs shall also be deducted.
3. Where SENSECA is to perform repairs for the customer which do not follow within the framework of the guarantee or any given guarantee, the repair Good shall be sent back at the cost of the customer. Where a cost estimate is requested by the customer for the repair, SENSECA is entitled to additionally invoice this work in the amount actually incurred.

**10. Limitation of Liability:**

1. The liability of SENSECA for damages, regardless of the legal basis, (including, without limitation, contractual liability, tort liability, pre-contractual liability or statutory liability), shall be governed exclusively by this Clause 10 and by the applicable provisions of Spanish law.
2. To the extent permitted under Spanish Law, SENSECA is not liable in the case of simple negligence (negligencia leve) of its management bodies, legal representatives, employees or agents, to the extent that this does not relate to a breach of essential contractual obligations.

For these purposes, essential, contractual obligations are those whose performance is fundamental for the proper execution of the contract and on whose compliance the customer may reasonably rely.

3. Where SENSECA is liable in accordance with and on the grounds of § 10.2, such liability shall be limited to (i) damages which SENSECA foresaw upon conclusion of the contract as a possible consequence of a breach of contract or which SENSECA should have foreseen when exercising due care and attention and (ii) direct damages effectively suffered.

In any event, and except in cases of wilful misconduct or gross negligence, SENSECA's total aggregate liability arising out of or in connection with the contract shall not exceed 100% of the net contract value of the affected delivery.

To the extent permitted by law, SENSECA shall not be liable for indirect, consequential or special damages, including but not limited to: (a) loss of profit, (b) loss of production, (c) loss of business opportunity, (d) loss of data, (e) reputational damage, or any other economic loss not directly and immediately caused by the breach.

4. In the event of a delivery delay caused by our simple negligence, the amount of default damages which the customer may claim shall be limited to a maximum of 5 % of the agreed net contract price for each complete week of delivery delay and in total to a maximum of 20 % of the agreed net contract price.
5. Where we provide technical information or act in a consulting capacity and such information or consulting is not included in the contractually agreed scope of performance owed by us, this shall take place free of charge and under exclusion of any liability.



6. The aforementioned exclusions and limitations on liability shall apply to the same extent for the benefit of management bodies, legal representatives, employees or agents of SENSECA.

7. The limitations set out in this Clause 10 shall not apply to liability of SENSECA for wilful misconduct ("dolo") or gross negligence ("*negligencia grave*"); for death or personal injury; for fraud or fraudulent concealment; under mandatory product liability legislation; or in any case where liability cannot legally be excluded or limited under Spanish law.

8. If the customer sells the delivered Good unchanged or after processing, transforming or combining with other items, the customer shall release us internally from all product liability claims by third parties, to the extent that the customer is responsible for the circumstances giving rise to the liability.

9. Any claim for damages against SENSECA shall expire twelve (12) months after the customer became aware, or should reasonably have become aware, of the facts giving rise to the claim, and in any event no later than twenty-four (24) months after delivery, except where mandatory statutory limitation periods apply.

#### **11. Disposal of Electronic Devices:**

1. To the extent that contractual Goods qualify as electrical or electronic equipment within the meaning of applicable Spanish legislation shall be subject to the following paragraphs.

2. The customer shall dispose of the delivered electronic devices at the end of their useful lives at its own cost and in accordance with the relevant legal regulations. The customer shall release SENSECA from manufacturer obligations under Spanish Law and in that context from any associated claims by third parties.

3. In the event that delivered devices are transferred to commercial third parties, the customer is obliged to also subject such third parties in writing to the obligation to properly dispose of the devices at the end of their useful lives, to bear the costs thereof and in the event of a further transfer, to effect a transfer of the obligation in accordance with this provision.

4. In the event that the customer fails to contractually oblige third parties to undertake proper disposal and to oblige third parties to pass on the obligation in accordance with § 11.2, the customer shall be obliged to take back the delivered goods at the end of their useful lives at its cost and to dispose of them properly in accordance with legal regulations. This shall also apply where the obligation of the third party was not made in writing and the third party disputes contractual assumption of the duty to dispose.

5. The customer's indemnification and release obligations under this Section shall survive termination of the contractual relationship. Such obligations shall remain enforceable for a period of two (2) years from the date on which SENSECA becomes aware of the end of use of the equipment, and in any event within the maximum limitation period permitted under applicable Spanish law.

#### **12. Confidentiality:**

1. The contracting parties are obliged to make all information provided by the other contracting party for the purpose of fulfilling this agreement, which is marked as confidential or which is under the given circumstances recognisable as business or trade secrets ("**Technical Information**"), accessible only to their own employees who are authorised to know it and to ensure that no unauthorised persons gain access to any Technical Information.



2. The obligation to maintain confidentiality in accordance with paragraph 1 shall apply without limitation, without the need for any special marking or classification of this information as confidential, to all information that SENSECA receives during the performance of laboratory activities or that is created by SENSECA ("**Laboratory Information**").

3. The only exceptions to the confidentiality obligations above apply to Technical Information and Laboratory Information that can be proven to already be publicly and lawfully accessible from other sources.

4. The parties shall limit the use of Technical Information and Laboratory Information of the respective other contracting party solely to the performance of this agreement and shall not use it in any way for their own purposes and shall refrain from any publication. Upon execution of this Agreement, all Technical Information and Laboratory Information in physical form shall be returned. Copies of Technical Information and Laboratory Information, in whatever form, shall be destroyed to the extent that this is actually and legally reasonable.

5. If necessary, the contracting parties shall conclude a separate, more detailed confidentiality agreement.

### **13 Data Protection**

1. The contracting parties are obliged to comply with Regulation (EU) 2016/679 ("General Data Protection Regulation" ("**GDPR**")), Spanish Organic Law 3/2018 of 5 December on Personal Data Protection and Guarantee of Digital Rights ("**LOPDGDD**"), and all other data protection laws applicable to their contractual relationship.

2. The contracting parties are obliged to instruct their employees and other agents used by them about the provisions of the GDPR, the LOPDGDD and other data protection provisions applicable to the contractual relationship of the parties and to oblige them to comply with these provisions.

3. The contracting parties are obliged to maintain strict confidentiality when processing personal data, which they receive within the scope of their contractual relationship ("**Personal Data**"). This obligation shall survive the termination of the contractual relationship of the parties.

4. The contracting parties oblige themselves to process Personal Data exclusively for the provision of the respective agreed services (purpose limitation) and to protect them by appropriate security measures (Art. 32 GDPR). The contracting parties shall notify the other contracting party in text form promptly of any breach of the protection of Personal Data pursuant to Art. 4.12 GDPR.

5. The disclosure of Personal Data to third parties is prohibited unless the other contracting party has previously consented to such disclosure in text form. This shall also apply to the disclosure of Personal Data to a commissioned data processor.

6. The contracting parties oblige themselves to process Personal Data only within the territory of the European Union and the European Economic Area.

7. As soon as the processing of Personal Data is no longer necessary for the provision of the agreed services, the relevant contracting party shall return the Personal Data and delete it thereafter, unless further processing is required by law.



8. If a contracting party processes Personal Data on behalf of the other contracting party in the context of the provision of services, the contracting parties shall conclude an agreement on commissioned processing in accordance with Article 28 GDPR

#### **14 Miscellaneous**

1. Unless expressly agreed otherwise in writing, these GTC and any contracts concluded pursuant to them shall be governed exclusively by the laws of Spain. The United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 is not applicable.

2. For all disputes arising out of or in connection with these GTC or any contract concluded under them, the courts of Madrid (Spain) shall have exclusive jurisdiction. However, SENSECA shall also be entitled, at its sole discretion, to bring proceedings before the courts having jurisdiction at the registered office or place of business of the customer.

3. In the event that a provision of these GTC or of the contract is or becomes wholly or partly void, ineffective or unenforceable, the effectiveness and enforceability of all other remaining provisions shall not be affected thereby. The void, ineffective or unenforceable provision shall be deemed replaced by such effective and enforceable provision which comes as close as possible to the commercial meaning and purpose of the void, ineffective or unenforceable provision with regard to its object, scope, time, place and scope of application. This shall apply mutatis mutandis to any gaps in these GTC or the contract.

4. The contractual language shall be English. In the event that interpretation is necessary, only the English version of this text shall be relevant. Translations into other languages are exclusively for information purposes.

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