GENERAL TERMS AND CONDITIONS OF SALE OF SENSORSCOPE LLC's PRODUCTS & SERVICES

1. GENERAL

1.1. These General Terms and Conditions of Sale ("Conditions") govern the offering, sale and delivery of all goods and/or services (hereinafter jointly referred to as the "Product(s)") from or on behalf of Sensorscope LLC, Parc Scientifique EPFL, PSE-D, CH-1015 Lausanne ("Sensorscope"), to customer ("Customer") and apply to all transactions between Sensorscope and Customer (Customer and Sensorscope collectively, the "Parties").

1.2. By contracting on the basis of the Conditions, Customer agrees to the applicability thereof, in respect of all transactions between Sensorscope and Customer.

1.3. Sensorscope explicitly rejects the applicability of any general terms and conditions of Customer. Furthermore, the Conditions supersede any and all terms of prior oral and written quotations, communications, agreements and understandings of the Parties in respect of the sale and delivery of the Products and shall apply in preference to and supersede any and all terms and conditions of any order placed by Customer and any other terms and conditions submitted by Customer. Failure by Sensorscope to object to the terms and conditions set by Customer shall in no event be construed as an acceptance of any of the terms and conditions of Customer. If the Conditions differ from any of the terms and conditions of Customer, the Conditions and any subsequent communication or conduct by or on behalf of Sensorscope, including, without limitation, confirmation of an order, performance of services, and delivery of Products, constitute a counter-offer and not acceptance of such terms and conditions submitted by Customer. Any communication or conduct of Customer which confirms an agreement for the delivery of Products by Sensorscope, as well as acceptance by Customer of any delivery of Products from Sensorscope shall constitute an unqualified acceptance by Customer of the Conditions.

1.4. The various versions of the Conditions are available on the following websites www.sensorscope.ch and www.climaps.com (the "Websites"), it being specified that the Conditions applicable to the Parties for a specific transaction shall be the last version of the Conditions published on the date of receipt of Customer by Customer of the related Confirmed Order. Sensorscope reserves the right to amend the Conditions at any time. The amended Conditions will take effect on the date of publishing of these amendments on the Websites, which means that the amended Conditions shall apply to all transactions concluded between the Parties after the date of such publishing.

1.5. Without prejudice to the Conditions, Sensorscope draws the attention of Customer on the co-existence of terms of use, available on the Websites, which set forth the legally binding terms (i) for accessing, using and visiting any and all web pages and related services and materials of the Websites, and (ii) for displaying, using and processing the data, collected or generated by Sensorscope, which relate to the use by Customer of the Products.

1.6. Any electronic communication between the Parties shall be effective as originals and shall be considered to be a "writing" between the Parties. The electronic communication system used by Sensorscope will serve as sole proof for the content and the time of delivery and receipt of such electronic communications.

2. QUOTATION, ORDERS AND CONFIRMATION

2.1. Unless stated otherwise by Sensorscope, quotations made by Sensorscope in whatever form are not binding to Sensorscope and merely constitute an invitation to Customer to place an order. All quotations issued by Sensorscope are revocable and subject to change without notice.

2.2. Orders are not binding until accepted by Sensorscope in writing (the "Confirmed Order"). Sensorscope shall be entitled to refuse a non-confirmed order without indicating the reasons. Verbal or written agreements and changes to orders that have been placed likewise always require written confirmation by Sensorscope in order to become valid.

2.3. Sensorscope may agree in writing to the cancellation or alteration of a Confirmed Order if the state of the works permits. The costs arising from the cancellation or alteration of a Confirmed Order will be exclusively borne by Customer.

2.4. With regard to payment for the Products, Customer acknowledges and agrees that time is of the essence. Sensorscope may, without prejudice to any other rights of Sensorscope and without a written reminder, charge interest on any overdue payment at 15% (fifteen percent) per annum from the due date computed on a

3. PRICES – PRICE CHANGES - DISCOUNT

3.1. Prices and currencies of the Products of Sensorscope are as set out in the Confirmed Order.

3.2. Prices do not include packaging, insurance, and value added tax or any other similar applicable taxes, duties, levies or charges in any jurisdiction levied in relation to the Products or the delivery thereof ("Taxes"). The amount of any Taxes levied in connection with the sale of Products to Customer shall be for Customer's account and shall either be added to each invoice or separately invoiced by Sensorscope to Customer.

3.3. Unless the prices have been indicated as firm by Sensorscope in the Confirmed Order, Sensorscope is entitled to increase the price of the Products still to be delivered if the cost price determining factors have been subject to an increase between the date of execution and the date of delivery or performance. These factors include but are not limited to: raw and auxiliary materials, energy, products obtained by Sensorscope from third parties, wages, salaries, social security contributions, governmental charges, freight costs and insurance premiums. Sensorscope shall notify Customer of such increase which shall not exceed the increase in the determining cost factors.

3.4. If Sensorscope grants a discount to Customer, this discount only relates to the delivery specifically mentioned in the Confirmed Order.

4. TERMS OF PAYMENT

4.1. Upon confirmation of the order, Customer shall pay an immediate advance payment equal to 30% of the total amount mentioned in the Confirmed Order. The outstanding amount shall be paid no later than 10 (ten) days after receipt of a written delivery notice from Sensorscope.

4.2. All payments shall be made without any deduction on account of any Taxes or transfer costs. For the sake of clarity, the place of payment for all payments to be made by Customer is the registered offices of Sensorscope.

4.3. Unless stated otherwise in the Confirmed Order, payment shall be made on the basis of net cash, to be received by Sensorscope within the above-mentioned deadline(s).

4.4. With regard to payment for the Products, Customer acknowledges and agrees that time is of the essence. Sensorscope may, without prejudice to any other rights of Sensorscope and without a written reminder, charge interest on any overdue payment at 15% (fifteen percent) per annum from the due date computed on a
daily basis until all outstanding amounts due by Customer are paid in full. All costs and expenses incurred by Sensorscope with respect to the collection of overdue payments (without limitation, reasonable attorney’s fees, expert fees, court costs and other expenses of litigation) shall be for Customer’s account.

4.5. If Customer is in default with payments for supplies he/it has already received, Sensorscope has the right to rescind in writing the part of the Confirmed Order not yet executed without allowing any further time and to cancel all Confirmed Orders, also for future deliveries at least a month in advance. Customer must compensate Sensorscope fully for damages arising therefrom.

4.6. If Customer does not comply with the terms of payment or if he/it is unable to make payment, all outstanding credit balances become due for payment irrespective of the agreed payment deadlines and may be claimed by Sensorscope immediately.

5. DELIVERY – EXAMINATION – ACCEPTANCE / COMPLAINT

5.1. Dispatch and transportation are at the cost and risk of Customer. EXW Incoterms® 2010 at the place notified by Sensorscope to Customer prior to delivery.

5.2. Unless stated otherwise in the Confirmed Order, any times or dates for delivery by Sensorscope are estimates and shall not be of the essence. Sensorscope is entitled to deliver the Products as stated in the Confirmed Order in parts and to invoice separately. Delay in delivery of any Products shall not relieve Customer of his/its obligation to accept delivery thereof, unless Customer cannot reasonably be expected to accept such late delivery.

5.3. Customer shall be obliged to accept the Products and pay the amount specified in the Confirmed Order for the Products delivered by Sensorscope. If dispatch is delayed at Customer’s request, Sensorscope will invoice Customer the resulting storage costs at least 0.5% (half a percent) of the total amount mentioned in the Confirmed Order, starting with the notification that the Products are ready for dispatch.

5.4. Customer must inspect the Products immediately upon receipt and satisfy himself/itself that the Products delivered meet the agreed specifications for the Products as stated in the Confirmed Order or, in the absence of agreed specifications, to the most recent specifications used by Sensorscope at the time of delivery of the Products (the “Specifications”).

5.5. Complaints about the Products shall be made in writing and must reach Sensorscope not later than 8 (eight) days from the date of delivery of the Products in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, and 8 (eight) days from the date on which any other claim (e.g. hidden defects) was or ought to have been apparent, but in no event later than the expiry of (i) a 12-month period running from the date of delivery of the Products or (ii) the warranty period mentioned in the Confirmed Order (if different), whichever occurs first.

5.6. In case of a disaccord between the Parties concerning the quality of a Product supplied by Sensorscope to Customer, Sensorscope will submit the purported defective Product to an independent expert reasonably acceptable to Customer to have determined whether or not the Product in question has met the Specifications. The results of such analysis shall be binding upon the Parties, and the Party unable to uphold its position shall bear the related costs of the expert.

5.7. Defects in parts of the Products do not entitle Customer to reject the entire delivery of the Products, unless Customer cannot reasonably be expected to accept delivery of the remaining non defective parts of the Products. Complaints, if any, do not affect Customer’s obligation to pay as defined in Section 4.

5.8. Failure to complain within the appropriate time or any use of the Products shall be deemed to be an unconditional acceptance of the Products as of the date of delivery and waiver of all claims in respect of the Products.

CANCELLATION

Customer’s wrongful non-acceptance or rejection of Products or cancellation of the Confirmed Order shall entitle Sensorscope to recover from Customer, in addition to any other damages caused by such action:

(i) in the case of Products which reasonably cannot be resold by Sensorscope to a third party, the price of such Products as quoted in the Confirmed Order; or

(ii) in the case of Products which can be resold by Sensorscope, damages equal to 50% (fifty percent) of the price for the Products specified in the Confirmed Order as liquidated damages, unless Customer can demonstrate that the actual damages incurred by Sensorscope are lower than 50% of the price or were not suffered at all.

7. TRANSFER OF RISK AND PROPERTY

7.1. Benefit and risk are transferred to Customer at the latest when the Products are handed over to the first carrier. If dispatch is not possible and no fault is attributable to Sensorscope, risk transfers to Customer with the notification that the Products are ready for dispatch.

7.2. The title to the Products shall not pass to Customer and full legal and beneficial ownership of the Products shall remain with Sensorscope unless and until Sensorscope has received payment in full for the Products, including costs such as interest, charges, expenses, etc. Customer will for the duration of the reservation of title protect the Products supplied at his/its own expense and will insure them against theft, fire, lightning, water and damage from the elements. Furthermore he/it will take all necessary steps to ensure that Sensorscope’s claim to title is neither diminished nor revoked.

LIMITED WARRANTY

Sensorscope solely warrants that, on the date of delivery and for an additional 12-month period as from the date of delivery, the Products shall conform to the Specifications. The scope to the extent the Products are in breach with such warranty, as determined in accordance with Section 5, Sensorscope may at its own option and within a reasonable time either repair or replace the Products at no charge to the Customer. Accordingly, Sensorscope’s obligation shall be limited solely to repair or replacement of the Products, to the exclusion of any other remedy, service or compensation for Customer.

8.2. Sensorscope’s obligation to repair or replace shall be contingent upon the following two cumulative conditions be met:

(i) receipt by Sensorscope of a timely notice by Customer of any alleged non-conformance of Products and, if applicable, the return of the Products, in accordance with Section 5, in particular Section 5.5; and

(ii) absence of abnormal or abusive use of the Products, which is an utilization which does not comply with the instructions listed on the user manual or with the product specifications, deterioration or damage of the Products resulting especially from collisions, objects falling, fire, vandalism, malicious intent, misuse, damages caused by animals, or accidents resulting from a lack or supervision.

8.3. By way of exception to the foregoing, Customer acknowledges that the sensors integrated within the Products (the “Sensors”) benefit from the warranty granted by the Sensor manufacturer. Sensorscope’s only obligation in this respect is the free replacement or repair of the Sensors or elements of the Sensors acknowledged defective by the Sensor manufacturer, without any other remedy, service or compensation.

8.4. By way of exception to the foregoing, Sensorscope gives no warranty whatsoever on the data transmission services (such as radio communication or GSM), in particular as regards any delay or temporal interruption thereof. GSM data transmission services are solely subject to the general terms and conditions of the network provider and, as the case may be, under its exclusive liability.

The foregoing is exclusive and in lieu of all other warranties, representations, conditions or other terms, express, implied, statutory, contractually or...
otherwise, including, without limitation, any warranty of merchantability, suitability or fitness for any purpose, or absence of infringement of any claim in any intellectual property right covering the Products.

9. LIMITED LIABILITY

9.1. Sensorscope's liability for any and all claims arising out of or in connection with the Products and the use thereof shall per occurrence be limited to direct damages of Customer and shall under no circumstances exceed the sales value of the defective relevant Product supplied to Customer.

9.2. Sensorscope shall under no circumstances be liable to Customer or any other person for any kind of special, incidental, indirect, consequential or punitive damage or loss, cost or expense, including without limitation, damage based upon lost goodwill, lost sales or profit, delay in delivery, work stoppage, production failure, impairment of other goods or based on any other cause, and whether arising out of or in connection with breach of warranty, breach of contract, misrepresentation, negligence or otherwise.

10. FORCE MAJEURE

10.1. Neither Party shall be liable in any way for any damage, loss, cost or expense arising out of or in connection with any delay, reduction, interference or failure in performing any obligation towards the other Party caused by any circumstance beyond its reasonable control, including, without limitation, acts of God, laws and regulations, administrative measures, orders or decrees of any court, earthquake, flood, fire, explosion, war, terrorism, riot, sabotage, accident, epidemic, strike, lockout, slowdown, labor disturbances, difficulty in obtaining necessary labor or raw materials or failure of transportation, breakdown of plant or essential machinery, emergency repair or maintenance, breakdown or shortage of utilities, delay in delivery or defects in goods supplied by suppliers or subcontractors ("Force Majeure").

10.2. Upon the occurrence of any event of Force Majeure, the Party suffering thereby shall promptly inform the other Party by written notice thereof or notifying the cause of the event and how it will affect its/its performance of its/its obligations under the Confirmed Order. In the event of any delay, the obligation to deliver shall be suspended for a period equal to the time loss by reason of Force Majeure. However, should a Force Majeure event continue or be expected to continue for a period extending to more than 60 (sixty) days after the agreed delivery date, either Party is entitled to cancel the affected part of the Confirmed Order without any liability to the other Party.

11. SUSPENSION AND TERMINATION

11.1. If Customer is in default of performance of his/its obligations towards Sensorscope and fails to provide to Sensorscope adequate assurance of Customer's performance before the date of scheduled delivery; or if Customer becomes insolvent or unable to pay his/its debts as they mature, or goes into liquidation (other than for the purpose of a reconstruction or merger) or any bankruptcy proceeding shall be instituted by or against Customer or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Customer or if Customer enters into a deed of arrangement or makes any assignment for the benefit of his/its creditors, then Sensorscope may by notice in writing forthwith, without prejudice to any of its other rights:

(i) demand return and take repossessing of any delivered Products which have not been paid for and all costs relating to the recovery of the Products shall be for the account of Customer; and/or

(ii) suspend its performance or terminate the Confirmed Order for pending delivery of Products unless Customer makes such payment for Products on a cash in advance basis or provides adequate assurance of such payment for Products to Sensorscope.

11.2. In any such event of Section 11.1, all outstanding claims of Sensorscope shall become due and payable immediately with respect to the Products delivered to Customer and not repossessed by Sensorscope.

12. INTELLECTUAL PROPERTY

12.1. All intellectual property rights arising out of or in connection with the Products shall be the exclusive property of Sensorscope.

12.2. Sensorscope has not verified the possible existence of third party intellectual property rights which might be infringed as a consequence of the sale and/or delivery of the Products and Sensorscope shall not be held liable for any loss or damage in that respect.

12.3. The sale of Products shall not, by implication or otherwise, convey any license under any intellectual property right relating to the compositions and/or applications of the Products, and Customer explicitly assumes all risks of any intellectual property infringement by reason of the use of the Products, whether singly or in combination with other materials or in any processing operation.

13. MISCELLANEOUS

13.1. Independent Contractors. Sensorscope and Customer are independent contractors, and the relationship created hereby shall not be deemed to be that of principal and agent.

13.2. Compliance with Laws and Standards. Customer acknowledges that the use of the Products may be subject to requirements or limitations under any law, statute ordinance, regulation, code or standard ("Laws and Standards"). Customer shall be exclusively responsible for (i) ensuring compliance with all Laws and Standards associated with his/its intended use of the Products; and (ii) obtaining all necessary approvals, permits or clearances for such use.

13.3. Non-Assignment. Neither Party may assign any of the rights or obligations under the Confirmed Order without the prior written consent of the other Party, except that either Party may assign such rights and obligations to any of its affiliates or to a third party acquiring all or a substantial part of its assets or business relating to the Products.

13.4. Severability. If any provision of the Conditions is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the legal and economic intent of the Parties to the fullest extent possible. In any event, all other provisions of the Conditions shall remain valid and enforceable to the fullest extent possible.

13.5. Heading. The headings contained in the Conditions are included for mere convenience of reference and shall not affect the latter's construction or interpretation.

13.6. Waiver. Failure by Sensorscope to enforce at any time any provision of the Conditions shall not be construed as a waiver of Sensorscope’s right to act or to enforce any such term or condition and Sensorscope’s rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by Sensorscope of any breach of Customer’s obligations shall constitute a waiver of any other prior or subsequent breach.

14. APPLICABLE LAW AND JURISDICTION


14.2. Any dispute arising out of, or in connection with, the Confirmed Order and/or the Conditions shall be exclusively submitted to the courts of Lausanne, Switzerland, without prejudice to a possible appeal to the Swiss Federal Tribunal.

15. LANGUAGE

The original version of the Conditions is made in the English language. In the event of any inconsistency or contradiction between the English version and any translation thereof, the English version shall prevail.

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