

1. Scope of Application. Exclusively the following terms and conditions shall apply to the legal relations with the customers, even with respect to information and advice. Once the Terms and Conditions of Envisiontec GmbH are introduced into the business with customer, they shall also apply to all further business relations between customer and Envisiontec GmbH, unless agreed otherwise in writing. Terms and conditions of the customer shall only be applicable if Envisiontec GmbH expressly recognize them in writing. Field representatives and travelers shall not be authorized to do this. Silence of the Envisiontec GmbH about variant terms and conditions shall not be considered as recognition or approval, not even with respect to future contracts. These Terms and Conditions shall apply in lieu of any terms and conditions of purchasing of the customer, even if, in accordance with the customer's terms and conditions of purchasing, the acceptance of an order constitutes unconditional recognition of such terms and conditions of purchasing. Customer recognizes by accepting the order confirmation of Envisiontec GmbH that it waives any legal objections derived from its terms and conditions of purchasing.

2. Conclusion of Contract; Scope of Delivery; Acceptance. Offers of Envisiontec GmbH shall be subject to change. They are requests for orders. Even in ongoing business transactions, a contract shall first come about when Envisiontec GmbH confirms the customer's order in writing (also per fax or e-mail). The order confirmation shall be decisive for the content of the delivery contract. In the case of immediate delivery, the confirmation may be replaced by our invoice. All covenants, ancillary agreements, warranties and contractual representations must be made in writing. This shall also apply to the rescission of this requirement for the written form. Verbal collateral agreements shall be null and void.

3. Purchase and License. Pursuant to the terms and conditions of this Agreement, Customer purchases and Envisiontec GmbH sells, the equipment listed on the front of this Agreement (the „Equipment“). Envisiontec GmbH grants, and Customer accepts, a paid-up, personal, non-exclusive, non-transferable license to use the Equipment and in particular the software listed on the front of this Agreement (the „Software“) (only to use in object code form and on equipment designated by Envisiontec GmbH and to use all documentation relating to the Software (the „Documentation“) in support thereof, as long as this Agreement is in effect and Customer is not in material default of this Agreement or until Customer discontinues the licensed use of the Software or the Documentation. Customer acknowledges that the Software may include commercially available software licensed by third parties (the „Third-Party Software“). Customer agrees to abide by the standard licensing arrangement supplied with the Third-Party Software. This Agreement covers only the Equipment Software, Documentation and other matters specifically set forth herein. Any other matters must be specifically set forth in a written addendum to this Agreement signed by each party. Customer accepts to use the Equipment only with material delivered by Envisiontec GmbH.

4. Warranty. Any reference to standards, similar technical provisions and technical specifications, descriptions and depictions of the delivered object in the offers and prospectuses and advertising of Envisiontec GmbH shall only represent specifications of features if Envisiontec GmbH has expressly declared the condition to be a feature of the goods; otherwise, such shall constitute non-binding general performance specifications. Envisiontec GmbH shall then only assume a guarantee if Envisiontec GmbH has designated the feature as guaranteed.

Envisiontec GmbH warrants that the Equipment will perform according to the specifications described in Envisiontec GmbH reference manuals during the one-year period following the Installation Date (as defined below) and that at the Installation Date the Software (other than any Third-Party Software) will perform in accordance with the specifications as described in such manuals when used on the equipment designated by Envisiontec GmbH.

Complaints about any detectable defects must be made by the customer immediately or, at the latest, 12 days after the performance has been rendered, even with respect to any portion of the performance which can be used by the customer. The failure to raise complaints in due time or form shall exclude any warranty claims on the part of the customer based on breach of duty due to poor performance. In the event of defects identifiable on delivery, complaints must also be made to the transport companies, which must be instructed to record the defects. Defect complaints must contain the most detailed description of the defects possible. The failure to raise complaints in due time or form shall exclude any warranty claims on the part of the customer based on breach of duty due to poor performance. Complaints about hidden defects must be raised immediately after the defects are detected or, at the latest, within the limitation period mentioned in Section 8. Defect complaints must contain a description of the defect which is as detailed as possible. The failure to raise complaints in due time or form shall exclude any warranty claims on the part of the customer based on breach of duty due to poor performance.

Before asserting any further rights, the customer must issue without delay a written warning regarding any other breaches of duty, establishing a reasonable period for remedy.

If a defect exists, it shall be remedied, at the choice of Envisiontec GmbH, except in the event of delivery recourse pursuant to §§ 478 and 479 of the Civil Code, by way of subsequent improvement or replacement delivery free of charge; Envisiontec GmbH must in principle be granted two attempts at subsequent performance. Defects for which the customer itself is responsible and unjustified reclamations shall be remedied by Envisiontec GmbH, if the customer is an enterpriser, on behalf and at the cost of the customer. In the event of any defect complaints, payments of the customer may only be retained to a degree which stands in reasonable proportion to the material defects that have appeared. If defect complaints are made unjustly, Envisiontec GmbH shall be entitled to request from the customer compensation for the expenses incurred by us in this regard. If, by way of exception, the breach of duty is not related to a work performance on part of Envisiontec GmbH, rescission shall be excluded if the breach of duty is insubstantial. Rescission shall likewise be excluded if Envisiontec GmbH is not responsible for the breach of duty. For verifiable material, production or design defects, we shall provide a warranty—unless agreed otherwise in writing or in the case of § 478 of the Civil Code (recourse claim)—for the period of one year, starting from the commencement date of the limitation period stipulated by law.

The above limitation period shall also apply to conflicting claims based on torts and to any claims from damage due to consequential defects. Further claims of the customer due or in relation to defects or damage from consequential defects, on whatever ground, shall only exist in accordance with the provisions in Section 8., unless the claims entail damage compensation claims from a warranted feature or a guarantee which is intended to assure the customer against the risk of damage from consequential defects. Even in such event, Envisiontec GmbH shall only be liable for typical and foreseeable damage.

The warranty and the resulting liability shall be excluded if defects and the related damage are based on defective material, faulty design, defective execution or erroneous assembly instructions that cannot be verified. In particular, any warranty and liability shall be excluded for faulty use (particularly in the case of assembly not corresponding to the state of technology or contrary to assembly instructions) or natural wear and tear of goods, disproportionate use or unsuitable operating equipment as well as the consequences of chemical or electrolytical effects not corresponding to foreseen, average standard effects. Defect claims shall not exist in the case of merely minor variation from the agreed or customary conditions or usability. Our liability in accordance with Section 8. shall not be prejudiced hereby.

„Installation Date“ shall mean the date determined by the earlier to occur of (i) the completion of on-site assurance testing by Envisiontec GmbH (or its agent or distributor) or (ii) 30 days from delivery of the Equipment and the Software. The warranty does not cover the cost of shipping defective parts from the manufacturer or replacement parts to the end user site. The warranty does not cover any travel and accommodations charges during the warranty period. All shipping expenses and travel and accommodation charges will be the sole responsibility of the Customer.

The usage of any consumable items that are not certified by EnvisionTEC may cause serious damage to the equipment and may cause the equipment to fail to perform according to the published specifications. The usage of any non EnvisionTEC certified consumables such as, but not limited to, projector lamps, photopolymer resin, and material basements will immediately void any warranty or extended warranty without any refund to the customer. EnvisionTEC reserves the right to refuse technical support and/or stop providing any consumables or spare parts to any customer who uses non EnvisionTEC certified consumables and parts. By purchasing any EnvisionTEC equipment, the customer agrees without any conditions or any objections to use only Envisiontec certified consumables and parts.

5. Installation. Envisiontec GmbH (or its agent or distributor) shall install the Equipment and Software at the site designated by Customer; provided, however, that Customer shall be responsible for the preparation of such site according to the specifications provided by Envisiontec GmbH (or its agent or distributor) and for any special handling charges or other arrangements, such as charges relating to storage, drayage, cranes or building modifications. Envisiontec GmbH (or its agent or distributor) shall perform on-site assurance tests on the Equipment and Software. All installation services shall be performed by Envisiontec GmbH (or its agent or distributor) during normal working hours on normal working days, and Customer shall provide Envisiontec GmbH (or its agent or distributor) with full and free access to the Equipment, which access shall include computer time at no charge to Envisiontec GmbH (or its agent or distributor).

6. Delivery and Payment. Delivery of the Equipment and the Software shall be ex works at Envisiontec GmbH Germany facility on the shipping date set forth on the front of this Agreement. Binding delivery dates and periods must be agreed expressly and in writing. Envisiontec GmbH shall make best efforts to meet non-binding or approximate („about“, „approx.“, etc.) delivery dates or periods. Delivery periods shall commence upon receipt of the order confirmation of Envisiontec GmbH by the customer, though not before all details for executing the order have been clarified and all other conditions to be fulfilled by the customer have occurred. This shall also apply to delivery dates. If the customer has requested changes after the order has been issued, a new delivery period shall commence upon the confirmation of Envisiontec GmbH of the change.

Deliveries may be made prior to the expiration of the delivery period. The day the delivery readiness is notified shall be considered the delivery day; otherwise, the day the goods are shipped shall be considered the delivery day. Unless stipulated otherwise in writing, interest in performance of Envisiontec GmbH shall only be considered as cancelled if Envisiontec GmbH has not delivered material parts or if Envisiontec GmbH render delivery in delay. Unless stipulated otherwise, deliveries related to long-term contracts shall be made when called up and those related to individual contracts shall be made within the stipulated delivery period, as Envisiontec GmbH choose. Envisiontec GmbH may deliver the goods as of the first working day after the contract is closed and at any time within the delivery period during normal business hours. If Envisiontec GmbH comes into default with delivery, the customer must initially establish a reasonable subsequent grace period for Envisiontec GmbH to render performance. If such grace period lapses unproductively, the customer may assert the rights stipulated in §§ 280, 281, 284, 286 and 323 of the Civil Code under the conditions therein. Damage compensation claims due to a breach of duty—for whatever reason—shall only exist in accordance with the provisions of Section 8. If Envisiontec GmbH fails to render the performance prior to a date determined in the contract or within a contractually determined period, the customer may rescind the contract, provided the customer has stipulated in the contract that its interest in the performance is associated with the punctuality thereof.

Damage compensation claims due to delay in delivery shall be limited to the maximum amount of 10% of the net delivery price of the goods regarding which Envisiontec GmbH is in delay in delivery. Envisiontec GmbH shall not be in default if the customer is in default with the performance of obligations towards us, even obligations from other contracts.

General Sales Terms and Condition

Unless otherwise provided on the front of this Agreement, payment of the total purchase price for the Equipment and Software shall be due: (i) 30 % upon the execution of this Agreement, (ii) 33 60 % prior to shipment and (iii) 10 % within 30 days after delivery. Customer shall pay interest at the rate of 1 1/2% per month or the highest legal interest rate, whichever is lower, on all overdue amounts. Customer shall provide Envisiontec GmbH with appropriate documentation if any exemption from sales or use taxes is claimed. Customer grants to Envisiontec GmbH a purchase money security interest on all of the Equipment delivered until Envisiontec GmbH has received payment in full and at Envisiontec GmbH request, Customer will execute a UCC-1 financing statement in connection with such security interest.

7. Right to Self-Delivery; Force Majeure and Other Hindrances. If Envisiontec GmbH does not receive deliveries or performances from its subcontractors or does not receive such properly or in due time due to reasons for which Envisiontec GmbH is not responsible or in the event of force majeure, Envisiontec GmbH shall inform customer thereof in due time in writing. In such event, Envisiontec GmbH shall be entitled to postpone the delivery for the period of the hindrance or to rescind the still unperformed portion of the contract in whole or in part, provided Envisiontec GmbH has met its above duty to provide information and have not assumed the procurement risk. Force majeure shall exist in the event of a strike, lock-out, government intervention, energy or raw material shortage, transportation bottleneck through no fault of our own, operational hindrances through no fault of our own, e.g. due to fire, water or damage to machinery and all other hindrances, which, upon objective consideration, have not been negligently caused by Envisiontec GmbH. If a delivery date or delivery period has been agreed bindingly and is exceeded due to events in accordance with 7, the customer shall be entitled after a reasonable subsequent grace period has lapsed unproductively to rescind the still unperformed portion of the contract, provided it is objectively unreasonable for the customer to further adhere to the contract. Further claims of the customer, particularly damage compensation claims, shall be excluded in such event.

8. Indemnification; Limitation of Liability. Envisiontec GmbH shall indemnify and hold Customer harmless from all losses, claims, damages, actions and expenses, including reasonable attorney's fees and expenses, arising out of any claim that the Equipment or Software (other than any Third-Party Software) infringes a patent in the country where the Customer is operating the Equipment or Software (other than any Third-Party Software), copyright or other proprietary right, provided that Customer shall promptly notify Envisiontec GmbH in writing of any such claim. Envisiontec GmbH shall have the right, but not the obligation, to assume control of the defense of any such action, which control shall include, without limitation, the selection of counsel and the right to settle any such action. Envisiontec GmbH may elect (in its sole discretion) to substitute comparable non-infringing equipment or software for the Equipment or Software, modify the Equipment or Software to make it non-infringing or obtain for the Customer, at Envisiontec GmbH expense, a license to continue using the Equipment or Software. If such alternatives are impractical or the continued use of the Equipment or Software is enjoined, Envisiontec GmbH may buy back the Equipment or Software from the customer for the original purchase price less the reasonable rental value for its use at Envisiontec GmbH lowest standard lease or rental rate for the Equipment or Software when originally delivered to Customer or as otherwise determined in good faith by Envisiontec GmbH if Envisiontec GmbH then or thereafter does not have a standard rental rate. Envisiontec GmbH shall indemnify and hold Customer harmless from any losses, claims, damages, or expenses to the extent they result from the proven gross negligence or willful misconduct of Envisiontec GmbH.

General Sales Terms and Condition

Envisiontec GmbH shall not be liable for claims of the customer to damage compensation, irrespective of the legal ground, particularly in the event of breach of duties from the debt relation or torts. This shall not apply if liability is compulsorily prescribed by law, particularly:

- ◊ for any intentional or grossly negligent breach of duty on part of Envisiontec GmbH or intentional or grossly negligent breach of duty on the part of legal representatives or vicarious agents of Envisiontec GmbH; and
- ◊ for the breach of material contractual duties or in the case of any impossibility or substantial breach of duty for which we are responsible;
- ◊ if, in the case of a breach of other duties in the terms of § 241(2) of the Civil Code, the customer can no longer be expected to accept the performance of Envisiontec GmbH;
- ◊ in the case of injury to life, limb or health, even by the legal representatives or vicarious agents of Envisiontec GmbH.
- ◊ if Envisiontec GmbH had assumed a guarantee for the conditions of the goods or the existence of an outcome or the procurement risk and in the case of liability in accordance with the Product Liability Act.

In other events, Envisiontec GmbH shall not be liable for any claims directed against Envisiontec GmbH for damage compensation and reimbursement of expenses based on the contractual relation due to negligent breach of duty, irrespective of the legal ground, in the case of slight negligence.

In the event of liability in accordance with this Section or no-fault liability, particularly in the event of initial impossibility and defects in title, Envisiontec GmbH shall only be liable for typical and unforeseeable damage; the maximum liability is generally limited at most to half of the amount of purchase price of the machine. Envisiontec GmbH shall only bear liability based on the assumption of procurement risk if Envisiontec GmbH had expressly assumed the procurement risk by written agreement.

Liability for indirect damage and damage from consequential defects shall be excluded, unless Envisiontec GmbH had breached a material contractual duty or Envisiontec GmbH, its executives or vicarious agents are responsible for an intentional or grossly negligent breach of duty. These liability exclusions or limitations pursuant to this Sections shall apply to the same degree in favor of executives and other employees and vicarious agents as well as to subcontractors of Envisiontec GmbH.

Claims of the customer to damage compensation based on the same contractual relation may only be asserted within a preclusive one-year period following the Installation Date (as defined above). This shall not apply in the event we are guilty of fraud or gross negligence. No reversal of the burden of proof shall be associated with the above provisions.

9. Software and Documentation. Subject to the rights granted to Customer herein, all rights, title and interest in and to the Software and Documentation are and shall remain the property of Envisiontec GmbH and Customer shall not make any copies of the Software other than a reasonable number of backup copies and shall maintain all copyright notices on all copies of the Software. Customer acknowledges and agrees that the Software and all permitted copies thereof, the Documentation and the know-how associated with operating and maintaining the Envisiontec System, constitute valuable trade secrets of Envisiontec GmbH. Customer shall not reverse, compile or disassemble the Software or any portion thereof; in such event, the modified Software shall be subject to this Agreement. Customer shall not disclose, sublet, sublicense, assign or transfer the Software, Documentation or know-how associated with operating and maintaining the System or any portion thereof, or any rights relating thereto to any third party without the prior written consent of Envisiontec GmbH. Envisiontec GmbH may (but is not obligated to) modify the design, instructions or operating parameters of the Software or any portion thereof; in such event, the modified Software shall be subject to this Agreement. The license granted under Section 2 does not include the right to obtain or practice new releases or upgrades of any Envisiontec GmbH software. Customer agrees to limit its use of the Software solely to the equipment on which the Software was originally installed by Envisiontec GmbH or on such other equipment as Envisiontec GmbH may consent in writing. Upon the termination of the license to use the Software, Customer shall return all copies of the Software and the Documentation to Envisiontec GmbH.

10. Retention or set-off right. A retention or set-off right of the customer shall only exist in relation to those counterclaims which are undisputed or recognized by non-appealable judgment, unless the counterclaim is based on a breach of material contractual duties by ourselves. A retention right may only be exercised by the customer if its counterclaim is based on the same contractual relation.

11. Retention of Title. Envisiontec GmbH shall reserve title to all machinery and goods supplied by Envisiontec GmbH (hereinafter, „reserved goods“) until all claims of Envisiontec GmbH from the business relation with the customer and any future claims from subsequently concluded contracts are paid. This shall also apply to any balance in favor of Envisiontec GmbH if some or all claims have been accepted by Envisiontec GmbH on a current account or the balance has been drawn. The customer must sufficiently insure the reserved goods, particularly against fire and theft. Claims against the insurance company based on a damage event related to the reserved goods shall be assigned to us in advance in the value of the reserved goods.

In the event of conduct in breach of contract, particularly in the event of default in payment, Envisiontec GmbH shall be entitled to take back all reserved goods, without having to first rescind the contract; the customer shall in this event be readily obligated to surrender the reserved goods if the customer is responsible for a not merely insignificant breach of duty. To determine the status of the goods delivered by Envisiontec GmbH, Envisiontec GmbH may access the business premises of the customer at any time during normal business hours. Taking back the reserved goods shall only constitute a rescission of the contract if Envisiontec GmbH expressly declare this in writing or if so provided by compulsory provisions of law. The customer must inform us without delay of any intervention by third parties with respect to the reserved goods or claims assigned to Envisiontec GmbH. If the value of the collateral existing on behalf of Envisiontec GmbH in accordance with the above provisions exceeds the total amount of secured claims by more than 10%, Envisiontec GmbH shall be obligated at the customer's request to release collateral of choice of Envisiontec GmbH to such degree.

12. Place of Performance; Jurisdiction; Applicable Law. The place of performance for all contractual obligations shall be the shipping station. Duesseldorf shall be the exclusive place of jurisdiction for all disputes. Envisiontec GmbH shall be entitled, however, to take action against the customer at the customer's general place of jurisdiction. Exclusively the law of the Federal Republic of Germany shall apply to all legal relations between the customer and Envisiontec GmbH, to the exclusion of the UN Sales Convention.

13. Initiation of Insolvency or Composition Proceedings; Suspension of Payments. Any petition for the initiation of insolvency or composition or comparable proceedings filed by the customer or any suspension of payments by the customer not based on retention or other rights shall entitle Envisiontec GmbH to rescind the contract at any time or to make the delivery of the purchased thing contingent on the prior fulfillment of the payment obligation. If the purchased thing has already been delivered, the purchase price shall be due immediately in the aforementioned cases. Envisiontec GmbH shall also be entitled to reclaim the purchased thing in the aforementioned cases and to retain it until the full payment of the purchase price.

14. Final Provisions, Changes, Severability. If the order confirmation of Envisiontec GmbH contains a clause listed in INCOTERMS (e.g. freight/carriage paid, ex works, etc.), the latest INCOTERMS version shall apply to the clause, unless stipulated otherwise in the order confirmation. Any changes in these Terms and Conditions of Business shall be notified to the customer in writing. The changes shall be considered as approved by the customer if no objections are raised by the customer in due time.

General Sales Terms and Condition

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Envisiontec GmbH must refer to this legal consequence separately in the change notice. The customer must send the objection to Envisiontec GmbH within four weeks after receipt of the change notice. In the event any provisions hereof are invalid, the remaining provisions shall remain fully effective. That provision which most closely approximates the economic intent of the parties shall apply, as permitted by law, in lieu of any invalid provisions, without need of further action.

Note

Pursuant to the provisions of the Federal Data Protection Act, Envisiontec GmbH hereby notes that Envisiontec GmbH uses a data-processing system to conduct its accounting and that Envisiontec GmbH will store in this context data received based on the business relation with the customer.

Company Name

Signature

Date
