

# General Terms and Conditions of PRESENSE Technologies GmbH

Dated: April 2018

## 1 General information

Unless otherwise agreed between PRESENSE Technologies GmbH (hereinafter referred to as "PRESENSE") and the customer, the following terms and conditions shall apply to all deliveries and services provided by PRESENSE. Conflicting or supplementary terms and conditions of the customer shall only be recognised by us if we expressly agree to their validity in writing. PRESENSE's General Terms and Conditions shall also apply if we carry out the delivery without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from our General Terms and Conditions.

These General Terms and Conditions only apply to entrepreneurs within the meaning of § 310 para. 1 BGB. PRESENSE products may contain third-party software whose licence terms take precedence over this agreement. The contractual partner is obliged to comply with the licensing and copyright provisions of the respective manufacturers and suppliers. With regard to any claims, the customer must contact the relevant third party manufacturer and not PRESENSE.

## 2 Conclusion of contract

The contract with PRESENSE is concluded by written order confirmation or by delivery of the products. The text form is sufficient to maintain the written form.

## 3 Delivery

- 3.1 All offers from PRESENSE are subject to confirmation unless they are expressly designated as binding. Delivery shall be made subject to punctual delivery to us and stock.
- 3.2 The agreed delivery period begins with the unopposed or confirmed order. Unless otherwise agreed, PRESENSE shall determine the mode of dispatch, route and carrier.
- 3.3 The delivery period may be extended by the time until the customer has provided all information and documents necessary for the execution of the order. This may also include an agreed down payment from the customer. The defence of non-performance of the contract remains reserved.
- 3.4 Delays in delivery caused by statutory or official orders (e.g. import and export restrictions) and for which we are not responsible shall extend the delivery period in accordance with the duration of such obstacles. Likewise, unforeseen obstacles to delivery (e.g. force majeure or missing delivery to us) for which PRESENSE is not responsible shall entitle PRESENSE to extend the delivery period. In important cases, we will inform you immediately of the beginning and end of these dates.
- 3.5 If an agreed delivery date is exceeded by more than 4 weeks, the customer shall be entitled to set PRESENSE a reasonable grace period, which shall however cover at least a period of one month. If the delivery obligation is not fulfilled by the end of the grace period, the customer has the right to withdraw from the contract.
- 3.6 Claims for damages due to withdrawal are excluded. In case of at least grossly negligent delayed delivery/partial delivery or in case of non-delivery/partial non-delivery, the claim for damages shall be limited to the foreseeable damage.
- 3.7 Partial deliveries or services by PRESENSE are permissible, provided that they are not unreasonable for the customer.

## 4 Prices

- 4.1 The list prices at the time of the order apply.
- 4.2 All our prices are exclusive of shipping costs, if applicable cash on delivery charges. Depending on the shipping method, the shipping costs are calculated depending on size, weight and number of packages.
- 4.3 All prices are exclusive of the respective statutory value added tax.

## 5 Terms of payment

- 5.1 Invoices are due upon receipt of the products.

- 5.2 All invoices from PRESENSE are payable within ten days of the invoice date. They are payable in cash or by bank transfer to PRESENSE accounts. A payment shall only be deemed to have been made when PRESENSE irrevocably disposes of the amount.
- 5.3 Deductions are not permitted unless they have been expressly agreed with PRESENSE.
- 5.4 Default occurs with a reminder, but at the latest 4 weeks after due date and receipt of an invoice or equivalent payment statement.
- 5.5 In the event of default, PRESENSE is entitled to withhold further deliveries and services. If the customer is in default of payment, PRESENSE is entitled to charge interest on arrears in the amount of 9% above the current base interest rate.
- 5.6 The customer shall be entitled to set-off rights if his counterclaims have been legally established, are uncontested or have been acknowledged by us. In addition, he is entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

## **6 Retention of title**

- 6.1 Until full payment of the purchase price and all claims arising from the business relationship, all delivered products (reserved goods) remain the property of PRESENSE. In the case of a current account, the reserved property shall be deemed as security for the balance claim due to PRESENSE. If you act in breach of contract, we are entitled to demand the return of the products.
- 6.2 The customer shall treat the reserved goods with care as long as they remain the property of PRESENSE. In the event of the customer acting in breach of contract - in particular in the event of default in payment - PRESENSE is entitled, without prejudice to other rights, to take back the reserved goods after setting a grace period. The customer is obliged to surrender the goods.
- 6.3 In the event of seizure or other interventions by third parties, the customer must notify us immediately in writing so that we can bring an action in accordance with § 771 ZPO. Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the customer shall be liable for the loss incurred by us.
- 6.4 If the customer sells the reserved goods, he assigns all claims and demands from the resale to PRESENSE in advance until all claims have been settled in full.
- 6.5 PRESENSE reserves the right to use the ordered and delivered product until full payment has been received.

## **7 Transfer of risks**

- 7.1 The statutory regulations on mail order sales shall apply. The risk passes to the buyer as soon as the consignment has been handed over to the person carrying out the transport. Any assumption of transport costs by PRESENSE agreed in individual cases shall have no influence on the transfer of risks.
- 7.2 Returns travel at the risk of the buyer, unless he exercises a statutory warranty right for defects.

## **8 Warranty**

- 8.1 The assertion of rights and claims for material defects in accordance with the following clauses presupposes that the customer has fulfilled his obligation to inspect and give notice of defects in accordance with § 377 HGB. The customer must give notice of defects in writing immediately after their discovery.
- 8.2 Damage to the packaging or the delivery items must be reported to the carrier and confirmed by him. This situation must also be reported to PRESENSE. Damage not immediately recognisable/hidden defects must be reported immediately upon discovery.
- 8.3 A material defect shall be deemed to exist if the hardware, the software or any user documentation does not exhibit the agreed quality.
- 8.4 The warranty does not cover the removal of defects caused by normal wear and tear, external influences or operating errors. The warranty does not apply if the customer changes devices, elements or additional equipment himself or has them changed by third parties without the consent of PRESENSE.

- 8.5 In the event of defects occurring, PRESENSE shall, at the customer's request, provide supplementary performance at its discretion either by remedying the defect (subsequent improvement) or by supplying a defect-free item (new delivery). Within a reasonable period of time, the customer may demand a type of supplementary performance other than that chosen by PRESENSE if the type of supplementary performance chosen by PRESENSE is unreasonable. PRESENSE's rights according to §§ 439 para. 3, 275 para. 2 and 3 BGB remain unaffected by this.
- 8.6 The contractual partner may demand a new delivery or subsequent improvement within a reasonable period of time if the other form of supplementary performance is not reasonable. This shall also apply if the end customer has legitimately demanded the other form of supplementary performance from the contractual partner. The rectification takes place at the place of business of PRESENSE or its vicarious agents.
- 8.7 No new warranty/guarantee periods come into force through an exchange within the framework of the warranty/guarantee.
- 8.8 The products to be returned must be properly packed. Transport damage caused by improper packaging also burdens the buyer. The original packaging shall be deemed to be the proper packaging.
- 8.9 After two failures of a subsequent improvement or in case of refusal of supplementary performance by PRESENSE, the customer may withdraw from the contract/reduce the purchase price by declaration to PRESENSE. A claim for damages is excluded.
- 8.10 For the handling of warranty claims, please refer to the information in our current return and service information.

## **9 Liability**

- 9.1 PRESENSE's liability for damage caused intentionally or through gross negligence by PRESENSE or one of its vicarious agents or legal representatives is governed by the statutory provisions.
- 9.2 PRESENSE shall be liable for damages resulting from injury to life, body or health in accordance with the statutory provisions.
- 9.3 PRESENSE shall also be liable for such damage as falls within the scope of protection of a guarantee, quality guarantee or durability guarantee given by PRESENSE, unless otherwise stipulated in the respective guarantee agreement.
- 9.4 If PRESENSE breaches such contractual obligations, the fulfilment of which is essential for the proper execution of the contract, the breach of which endangers the achievement of the contract and the compliance with which the contractual partner regularly relies on, PRESENSE shall be liable, if none of the cases mentioned in the previous paragraph is given, for the amount of the damage typical for the contract.
- 9.5 PRESENSE shall not be liable for damages which have not directly occurred to the delivered products; in particular, we shall not be liable for loss of profit or other financial losses of the purchaser.
- 9.6 Any further liability for damages is excluded, in particular liability for damages without fault is excluded. Liability under the Product Liability Act remains unaffected.
- 9.7 The customer is responsible for the regular backup of his data. In the event of data loss for which PRESENSE is responsible, PRESENSE shall therefore only be liable for the costs of duplicating the data from the backup copies to be made by the customer and for restoring the data, which will also be lost if the data has been properly backed up.

## **10 Use and property rights**

- 10.1 Insofar as PRESENSE software is part of the scope of delivery and nothing else has been determined, the customer is granted a simple (non-exclusive) non-transferable, unlimited right to use the software on an IT system.  
Reproductions of the software are only permitted for their intended use.  
The customer is not entitled to publicly reproduce, rent or lend the software through a wireless or wired connection, unless this has been expressly agreed or PRESENSE has given its prior written

consent. Any use exceeding the contractually agreed scope is inadmissible and requires an additional granting of rights by PRESENSE.

- 10.2 All industrial property rights existing for the products are and remain the property of PRESENSE and its suppliers. Any use requires the approval of PRESENSE and its suppliers.  
Copyright notices, serial numbers or marks may not be removed or changed from the software.
- 10.3 PRESENSE accepts no liability for the infringement of industrial property rights if the products are exported to another country, as it cannot be guaranteed that all rights are protected there.

## **11 Use in hazardous areas**

The use of PRESENSE software or individual components thereof (in particular the integrated AV scanner) by the customer and by third parties in hazardous areas that require error-free continuous operation of corresponding systems is not permitted. In particular, these include high-risk activities and high-availability activities, such as the operation of nuclear facilities, weapons systems, aeronautical navigation or communication systems, transportation systems as well as equipment and machines in the hospital and health sector or other applications relevant to the life and health of persons.

## **12 Take-back obligation**

PRESENSE is released by the customer from his take-back obligation according to ElektroG. After termination of use, the customer shall dispose of the delivered products at his own expense in accordance with the statutory requirements.

## **13 Export**

- 13.1 The products and technologies supplied by PRESENSE may be subject to export control rules and regulations of the European Union, the United States or other countries.
- 13.2 It is the customer's responsibility to inform himself about the possibilities on a case-by-case basis and to comply with the applicable export control regulations and provisions.
- 13.3 If an export licence is not granted, the customer is not entitled to withdraw from the contract.

## **14 Confidentiality**

PRESENSE and the customer mutually undertake to treat confidential information and documents of the other side, which are either obviously to be regarded as confidential or are designated as confidential, as trade and business secrets, to keep them secret for an unlimited period and to use them only within the scope of the respective business relationship.

## **15 Data protection**

PRESENSE is entitled to process data to the required extent and on the basis of the legal regulations for the execution of the contract and, if necessary, to pass them on to third parties.

## **16 Other conditions**

- 16.1 The customer declares himself in agreement with the naming of PRESENSE as a customer after the order has been placed. The customer can object to the naming at any time and without indication of reasons.
- 16.2 PRESENSE is entitled to provide services through third parties unless the customer expressly objects to this by stating important reasons. PRESENSE is liable for the provision of services by third parties as for its own actions.
- 16.3 The customer may transfer the rights and obligations arising from the business relationship with PRESENSE to a third party only with the prior consent of PRESENSE.
- 16.4 Subsidiary agreements have not been made. Amendments and supplements to the agreements made and to these conditions must be made in writing in order to be effective. This also applies to a waiver of this written form requirement.
- 16.5 The place of jurisdiction for all possible legal disputes in connection with these regulations is Hamburg. However, PRESENSE is also entitled, at its discretion, to bring the customer to court at its general place of jurisdiction.

- 16.6 German law applies exclusively, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).