

1. Definitions

Agreement: the collective term for all arrangements related to the Solution, applicable between the Customer and SENSOLUS. The Agreement consists of both (i) the Order Form (signed or otherwise accepted by the Customer), and (ii) these Terms;

Asset: any asset of the Customer to which Hardware is attached;

Business Day: Any day – other than Saturday, Sunday or legal holidays in Belgium.

Customer: every professional entity relying on the Solution of SENSOLUS;

End-User: any individual authorized by the Customer to access and use the Solution on behalf of the Customer;

Hardware: the hardware offered by SENSOLUS (i.e. trackers, beacons, sensors, batteries, etc.), which can (amongst others) be attached to Assets or infrastructure/location chosen by the Customer and transfer data to the Platform, including both:

- The hardware devices (co-)developed by SENSOLUS itself; or,
- Other hardware devices externally sourced by SENSOLUS.

Network: the communication network used to transfer the data from the Hardware to the Platform;

Order Form: the final proposal, quotation, work order or order form provided by SENSOLUS;

Platform: the SENSOLUS platform accessible via <https://sticktrack.sensolus.com>;

SENSOLUS: the public limited company (“naamloze vennootschap”) incorporated and existing under the laws of Belgium, with registered office at 9000 Ghent, Rijsenbergstraat 148, with VAT/company number BE 0543.551.277;

Services: All other industrial IoT related services offered by SENSOLUS to the Customer (e.g. trainings, installation, data analysis, custom development, etc.);

Solution: The end-to-end solution provided by SENSOLUS consisting of (a combination of) Hardware, Subscriptions to the Platform and/or Services;

Subscription: The personal, limited, non-exclusive, non-assignable and non-transferable access and use right to the different features of the Platform offered by SENSOLUS to the Customer, in accordance with the type of subscription chosen in the Agreement (i.e. Essential, Professional, Analytics);

Term: The initial or renewed term of the Subscription and -if applicable- the recurrent Services related thereto (e.g. additional service levels);

Terms: these Terms of Service, the Acceptable Use Policy and the Data Protection Terms;

Website: <https://www.sensolus.com>;

2. Applicability of the Terms

2.1. Unless explicitly otherwise in writing, the offering, sale and delivery of all Hardware, Subscriptions and/or Services by SENSOLUS shall be governed by the present Terms.

2.2. By relying on the Solution of SENSOLUS, the Customer agrees to be bound by these Terms. The Terms shall always take precedence over any terms and conditions of the Customer, which shall not be enforceable against SENSOLUS, even if the Customer (later) declares them to be the only valid terms. In the event that explicit preference is given in writing to the terms and conditions of the Customer, the following Terms shall remain valid in a supplementary way.

2.3. All transactions between SENSOLUS and the Customer are governed by (in descending hierarchical order, with the next applying in the absence or non-application of the previous): (i) the Order Form, (ii) the Terms, and; (iii) Belgian law.

3. Order

3.1. The Customer shall be responsible for the accuracy of any submitted order. The Customer shall also be responsible to give SENSOLUS any and all necessary information relating to the Hardware, Subscriptions and/or Services within a sufficient time.

4. Cancellation

4.1. In the event of the cancellation of the Agreement by the Customer (without this being due to a shortcoming of SENSOLUS), SENSOLUS reserves the right to charge the Hardware, Subscriptions and Services already provided (incl. incurred costs). The aforementioned fees are increased with lump sum damages amounting to 10% of the total value of fees (excl. VAT) of the cancelled Agreement, with a minimum of €250, and such without prejudice to SENSOLUS' right to compensation for higher proven damage. The same applies when SENSOLUS cancels the Agreement because of shortcomings of the Customer (without prejudice to other remedies).

5. The Solution of SENSOLUS

5.1. Unless when otherwise agreed upon, all obligations of SENSOLUS regarding the Solution are to be considered best-effort obligations. Hence, SENSOLUS shall always provide the Solution with due diligence, with appropriate care and in good faith, and shall deliver the Solution to the best of its understanding, skill, insight and ability, as reasonably expected of a professional experienced in services of comparable scope, complexity and size. However, SENSOLUS does not guarantee a certain result.

6. The Hardware

6.1. Delivery

6.1.1. SENSOLUS delivers the Hardware to the Customer as described in the Agreement. The expected time of delivery is approximate and not binding (unless when agreed upon differently).

6.1.2. All Hardware shall be sold and delivered Ex Works (EXW) at SENSOLUS' warehouse or other appointed location (Incoterms 2020 rules). The foregoing applies even if delivery is handled by SENSOLUS in which case SENSOLUS will act as a mandatory of the Customer.

6.2. Retention of title

6.2.1. SENSOLUS retains the entire ownership of all Hardware delivered to the Customer for as long as the Customer has not fully paid the price, costs, interests and all other accessories related to purchase thereof.

6.3. Defects

6.3.1. The Customer must verify (i) the conformity of the Hardware with the Agreement, and (ii) the proper functioning of the Hardware, upon delivery. If the Hardware presents a visible/material defect, the Customer must immediately (and no later than seven (7) Business Days after the delivery) notify the non-conformity and/or visible defect – at the risk of forfeiture – by email, to the address: support@sensolus.com.

6.3.2. The Customer must inform SENSOLUS of any hidden defect by email to the address support@sensolus.com no later than fourteen (14) Business Days after it has/should have been detected, and in any case within twelve (12) months upon delivery, at the risk of forfeiture.

6.3.3. Physical return of the defective Hardware requires prior approval by SENSOLUS. In absence of its approval, all returned shipments will be refused and the costs arising thereof shall be passed on to the Customer.

6.3.4. SENSOLUS shall check and examine the Hardware and investigate the complaint within ten (10) Business Days. The cost of such examinations shall be payable by SENSOLUS only to the extent the claim of the defect is found to be legitimate.

6.3.5. SENSOLUS cannot be held liable for, nor does it warrant defects caused by:

- Normal wear and tear, incorrect/improper treatment or maintenance, external influences, force majeure and/or hardship (as described in Article 16 below);
- An act of the Customer or a third party, regardless of whether these were caused by a fault or negligence.

7. The Subscription

7.1. SENSOLUS grants the Customer a Subscription in accordance with the application type described in the Agreement, subject to (i) correct and timely payment of the applicable fees, (ii) use in correspondence with the applicable usage limits, and (iii) use in compliance with the Agreement and Terms.

7.2. The Subscription can include the use of the Network, if specified in the Agreement. The Customer is obligated to verify, prior to concluding an Agreement, whether the Network coverage is available in the countries where it intends to use the Solution. A regularly updated overview is available on the Platform and/or the Website. As the Network is not under the control of SENSOLUS, it can never be responsible for any coverage issues or downtime in this regard. Nonetheless, SENSOLUS strives to inform the Customer on the aforementioned characteristics of the Network before the Agreement is concluded.

8. The Platform

8.1. The Customer is entitled to access and use the Platform in accordance with the applicable Subscription type (cfr. Article 7.1), the Acceptable Use Policy and/or Data Processing Terms.

8.2. The Platform of SENSOLUS is provided to the Customer “AS-IS”. In the event of problems with the availability of the Platform, SENSOLUS undertakes its best effort to solve such issue as soon as reasonably possible without giving any guarantee.

8.3. SENSOLUS performs maintenance activities and implements updates of the Platform on a regular basis. SENSOLUS strives to minimize the impact on the availability of the Platform.

9. The Services

9.1. SENSOLUS provides different additional Services to the Customer upon request, such as but not limited to training, installation of the Hardware, data analysis, etc. The specific scope, content, deadlines, etc. related to these Services will be agreed upon by the parties in the Order Form.

10. Complaint

10.1. Any complaints concerning SENSOLUS' Solution shall only be admissible if submitted to SENSOLUS in writing within a period of five (5) Business Days following the discovery of the problem by the Customer. Complaints shall always be submitted to SENSOLUS by e-mail to the address support@sensolus.com, containing a detailed justification of the complaint.

11. Prices

11.1. Prices are as stated in the Order Form. Prices confirmed by SENSOLUS for one order are not binding for subsequent orders, unless it concerns orders within a larger framework agreement.

11.2. The prices exclude transport costs, loading or unloading costs, insurance costs, packaging costs, VAT, levies, import and export duties, etc. (if applicable).

11.3. SENSOLUS is entitled to index the Subscription fee on January 1 in accordance with the Belgian Agoria-index ‘salary’ and thereby considering the applicable laws and limitations regarding indexation.

12. Payment

12.1. SENSOLUS' invoices are payable to SENSOLUS' designated bank account at the latest on the due date indicated on the Order Form or in the relevant invoices. The invoice has been settled when the complete amount has been received on SENSOLUS' designated bank account. All fees are due at the commencement of the Term.

12.2. Invoices that are not disputed by registered letter and/or via email to support@sensolus.com within eight (8) days after their issuing will be considered to have been fully accepted.

12.3. If the Customer fails to pay in full any invoice by the due date, then (without previous notice of default):

- the Customer shall pay interest on the overdue amount at the rate of 1% per month, to be added at the start of each month; and
- the Customer shall pay SENSOLUS 5% of the outstanding balance, with a minimum amount of 250,00 EUR for costs associated with a.o. the collection of the amounts due and with the adverse consequence on SENSOLUS' cash flow, as liquidated damages. This paragraph is without prejudice to SENSOLUS' right to prove and claim any higher damages.

12.4. Late, incomplete or non-payment of one expired invoice will cause all other invoices, for which a particular installment term has been agreed on, to become immediately payable, without previous notice of default.

12.5. If the Customer has not complied with a payment condition or other obligation, SENSOLUS is entitled to suspend or postpone its obligations in connection to any active Agreement between the parties.

12.6. By ordering the Hardware, the Subscriptions and/or Services, the Customer agrees to electronic invoicing by SENSOLUS.

12.7. SENSOLUS shall not refund the Customer nor award the Customer with any compensation and/or credits when the access and/or use of the Subscription is lowered or halted by the Customer during the Term.

13. Term

13.1. The Subscription is activated (and the Term starts) on the date the Hardware is invoiced, unless otherwise agreed upon.

13.2. The Term shall automatically be renewed for one year, unless either party gives notice of termination to the other party at the latest one month before the end of the Term. The Customer can give notice by sending an e-mail to support@sensolus.com. Failure to do so will obligate the Customer to pay the invoices related to the renewed Term, even if the Customer has no intention to continue its use of the Subscription. The new fees of SENSOLUS shall be applicable (without prejudice to Article 20).

14. Termination

14.1. Either party may terminate the Agreement per registered mail for material breach, automatically and without definitive court decision if the other party has committed a material breach and fails to remedy such breach within fifteen (15) days of written notice of default by the claiming party.

14.2. The Agreement may be terminated if an insolvency event occurs, i.e. a party ceases to pay its debts or ceases its activities, files for bankruptcy, liquidation of the legal entity or enters proceedings in receivership or judicial composition proceedings.

14.3. SENSOLUS shall never be obligated to refund the Customer any fees if the Customer terminates the Agreement during the Term (without the termination being the result of a material breach of SENSOLUS).

14.4. Articles 15, 17 and 18 shall survive the termination of the Agreement and continue in full force and effect.

15. Liability

15.1. SENSOLUS' liability shall always be assessed in the light of the best efforts obligation to which SENSOLUS has committed.

15.2. SENSOLUS' liability is limited to the mandatory liability imposed by law, and to:

- For the **Hardware**: the invoice value of the Hardware. SENSOLUS shall decide (at its sole discretion) to either (i) replace or repair the Hardware, or (ii) credit a pro rata part of the invoice amount of the Hardware.
- For the **Subscriptions**: the invoice value of the Subscriptions provided by SENSOLUS to the Customer as part of the Agreement during the twelve (12) month period preceding the date on which the applicable liability claim arose.
- For the **Services**: the applicable amount listed in the Order Form.

15.3. SENSOLUS cannot accept any claim from the Customer for indemnification for:

- Damage to, loss or theft of the Assets to which Hardware is attached;
- Damage resulting from the defaults in devices or infrastructure belonging to the Customer;
- Availability or performance of the Network. Network quality and availability are affected by elements out of SENSOLUS' control, such as atmospheric conditions, physical constraints, radio interference, etc.;
- Defects that are caused directly or indirectly by an act of the Customer or a third party, regardless of whether they were caused by a fault, negligence or carelessness (e.g. improper installation);
- Damage caused by incorrect, unreliable, incomplete or late input from the Customer with regard to the data, objectives, specifications, features, applications, etc.;
- Damage caused by the further use or application by the Customer after a problem has been found;
- Damage caused by force majeure or hardship in accordance with the provisions of Article 16.
- Incidental, special, consequential, exemplary or punitive damages, such as but not limited to loss of income, business, profits, revenue or anticipated savings or loss of goodwill.

15.4. Customer alone assumes the responsibility for the use made of the Solution by its End-Users, including but not limited to the proper and legal use of Hardware and the Platform, the use of information generated by the Hardware and the analysis generated by the Solution in general.

15.5. Customer will hold SENSOLUS harmless against all claims from third parties arising from the incorrect or unlawful use of the Solution. It will cover all damages such as compensations or legal costs (including reasonable lawyer's fees) providing that SENSOLUS has informed the Customer immediately of any claim arising from that matter.

16. Force majeure & Hardship

16.1. The following are conventionally considered as cases of force majeure or hardship: all circumstances which were reasonably unforeseeable at the time the Agreement was concluded, are unavoidable, and create (i) the inability on the part of SENSOLUS to carry out the Agreement, or (ii) make the implementation of the Agreement harder or more difficult than normally anticipated. For example (but not limited to): natural disasters, war, (threats of) terrorism, strikes, lock-out, diseases, epidemics/pandemics, shortage of personnel, organizational conditions, confiscation, fire, breakage of machinery and/or tools, scarcity of (raw) materials, bankruptcy or delays on the part of suppliers or subcontractors and failure by the Customer to provide SENSOLUS with the correct and complete information necessary to properly provide the Solution.

16.2. Cases of force majeure or hardship give SENSOLUS the right to temporarily suspend the performance of its obligations. A situation of force majeure that continues beyond three (3) months shall entitle the Customer to terminate the Agreement with immediate effect by simple written notification to SENSOLUS, without judicial intervention and without any liability on the part of SENSOLUS.

16.3. The Customer shall always be required to pay all fees for the Hardware, the Subscriptions and the Services that have already been performed resp. provided on the date of suspension/termination.

17. Confidentiality

17.1. All information (including but not limited to all information of financial, commercial, legal, fiscal, social, technical and organizational nature, business and trade secrets, business partner, customer and supplier data, employee data, personal data, programs, source codes, computer programs, computer code, modules, scripts, algorithms, features and modes of operation, inventions (whether or not patentable), processes, schematics, testing procedures, software design and architecture, design and function specifications) disclosed by one party to the other party prior to entering into an Agreement as well as during the Agreement shall be considered confidential and be treated with the utmost secrecy.

17.2. This confidentiality obligation applies during the course of the cooperation and will continue to exist for a period of two (2) years starting from the termination of the cooperation for any reason whatsoever.

17.3. Both parties shall remain at any moment the sole owner of their confidential information. Except as expressly set forth herein, nothing in these Terms or the relationship between parties shall grant to the other party any rights to or interest in the confidential information, and no implied licenses are granted.

17.4. This confidentiality obligation shall, however, in no event imply that SENSOLUS shall not be entitled to use and/or commercialize any ideas, input, feedback received from the Customer, which may serve to improve and/or expand the Solution.

18. Intellectual property rights

18.1. All registrations of the trade names/trademark SENSOLUS and/or STICKNTRACK, or any other trade name/trademark that includes the name SENSOLUS and/or STICKNTRACK, or under which the Solution is sold, shall be made in the name of SENSOLUS. The Customer shall not use SENSOLUS' company name, SENSOLUS' Solution names or trademarks as part of Customer's name or in any manner capable of misrepresenting the relationship between Customer and SENSOLUS. The Customer shall not alter, remove or tamper with the brands, trademarks, or other means of identification on the Solution.

18.2. The Customer explicitly acknowledges that SENSOLUS shall own and retain all (intellectual) property rights (whether specifically developed for the Customer or not) with respect to the Solution (including all copies, modifications, extensions and derivative works thereof), such as but not limited to authorship rights, patents, design rights, know how, ideas, concepts, methods, processes, technologies, know-how, inventions, domain names and database rights (excl. the data owned and uploaded by the Customer) or any other form of intangible thought process. In case of breach of the obligations, SENSOLUS is entitled to claim full compensation for all damage caused by the breach.

18.3. By uploading, providing or otherwise using data on, through or in connection with the Solution, the Customer grants SENSOLUS a non-exclusive, royalty-free, worldwide, sub-licensable, transferable, license to use, copy, store, modify, transmit and display the data to the extent necessary to provide the Solution.

19. Privacy

19.1. SENSOLUS as controller

19.1.1. The collection by SENSOLUS of personal data of the (potential) Customer and/or its personnel/staff shall take place in accordance with the provisions of SENSOLUS' privacy declaration, to be found on the Website. In such event, SENSOLUS acts as controller. By relying on the Solution and entering into an Agreement with SENSOLUS, the Customer acknowledges to have read and accepted the privacy declaration.

19.2. SENSOLUS as processor

19.2.1. The Customer acknowledges that – with regard to the processing of all data collected via and/or processed through the Solution by the Customer and/or the End-User – it shall act as controller and SENSOLUS as processor. All arrangements made between parties in this respect shall be solely governed by the Data Processing Terms (available on the Website and/or Platform). The Customer acknowledges explicitly that by relying on the Solution and entering into an Agreement with SENSOLUS to have read and accepted the Data Processing Terms in its entirety.

20. Changes to the Terms or the Solution

20.1. SENSOLUS reserves the right to amend these Terms, the offer, the fees and composition of its Solution at any time. New or amended Terms shall apply from the thirtieth (30th) day after they were made known to the Customer (e.g. through a notification on the Website and/or the Platform).

20.2. Subject to notice of at least thirty (30) days, SENSOLUS shall be entitled, except in a case of force majeure, government order or amended legislation, to discontinue the sale of Hardware or to make changes to the type, design or model thereof. In such cases, SENSOLUS shall not be under obligation to make such changes to Hardware already held or ordered by the Customer. The Customer cannot hold SENSOLUS liable for any changes within the meaning of this article and shall not have any recourse against SENSOLUS for its discontinuation of the supply of Hardware previously sold by SENSOLUS.

20.3. In the event the Customer cannot agree with a change in the offer of the Terms or the Solution (as described in Article 20.1) and the change entails a significant disadvantage for the Customer during the Term or the tacitly renewed Term, it is allowed to terminate the Agreement within 30 calendar days after being notified thereof by SENSOLUS. Under no circumstances, this entitles the Customer to claim any sort of damages or compensation from SENSOLUS.

21. Netting

21.1. In accordance with the stipulations of the Law on Financial Collateral dated 15 December 2004, SENSOLUS and the Customer will automatically and legally compensate and offset each other for all current and future debts.

22. Miscellaneous

22.1. No waiver: Any failure or delay by SENSOLUS in exercising any right under an Agreement and/or these Terms with the Customer, any single or partial exercise of any right under such Agreement and/or these Terms or any partial reaction or absence of reaction by SENSOLUS in the event of violation by the Customer of one or more provisions of such an Agreement and/or these Terms, shall not operate or be interpreted as a waiver (either express or implied, in whole or in part) of SENSOLUS' rights under such Agreement these Terms or under the said provision(s), nor shall it preclude any further exercise of any such rights. Any waiver of a right must be express and in writing. If there has been an express written waiver of a right following a specific failure by SENSOLUS, this waiver cannot be invoked by the Customer in favor of a new failure, similar to the prior one, or in favor of any other kind of failure.

22.2. Divisibility

22.2.1. If any part or any clause of these Terms is for whatever reason held to be illegal, invalid or unenforceable, such provisions shall be deleted and the remaining parts or clauses shall not be affected and shall remain valid and enforceable as if the invalid or unenforceable parts or clauses were not part of the Terms.

22.2.2. Any such part or clause shall be replaced by a provision that, insofar as legally possible, comes closest to the intention of parties in the affected part or clause. Parties shall in good faith negotiate and agree a mutually acceptable provision that shall replace the deleted provision.

22.3. Non-transfer

22.3.1. This Agreement and the rights and obligations ensuing from it for the Customer may not be transferred either directly or indirectly without the written consent of SENSOLUS.

22.3.2. SENSOLUS shall have the right to transfer this Agreement and the rights and obligations ensuing from it to a third Party. In that case a new agreement between Customer and the third party shall be concluded with terms and conditions (rights and obligations) identical to those in this Agreement for the remaining term.

23. Jurisdiction and applicable law

23.1. The Parties hereby undertake to apply the CEPANI Mediation Rules to all disputes arising out of or in connection with this Agreement. Should the mediation fail, any disputes arising out of or in relation with this Agreement shall be finally settled under the CEPANI Rules of Arbitration by one or more arbitrators appointed in accordance with those Rules. The seat of the arbitration shall be Ghent. The arbitration shall be conducted in the Dutch or English language.

23.2. The present Terms as well as any Agreement between parties, of whatever nature, are governed by and construed in accordance with the laws of Belgium, with exclusion of (i) all conflict of laws rules, (ii) the UN Convention on the International Sale of Goods (1980), and (iii) the NY Convention on the Limitation Period in the International Sale of Goods (1974).

23.3. Without prejudice to any other provision of these Terms, any claims by the Customer arising out of or in connection with an Agreement between parties or any purchase order will in any event become time-barred after expiration of one (1) year as from the date of delivery of the relevant Hardware, Subscription and/or Services.