

## SENSIMED Triggerfish® - General Sales Conditions

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All offers, unless otherwise stipulated, are subject to the following General Sales Conditions.

## 1 Definitions

**Care Facility:** any establishment authorized by applicable law to provide health care and other medical services to patients.

**Customer:** any entity or person purchasing the Product(s) (including, as the case may be, its personnel, students and authorized representatives).

**Product(s):** the Sensimed Triggerfish® medical device for continuous monitoring of the intra ocular pressure or any of its following components:

- The SENSIMED Triggerfish® Recorder
- The SENSIMED Triggerfish® Data cable
- The SENSIMED Triggerfish® Sensor
- The SENSIMED Triggerfish® Antenna
- The Bluetooth USB Adapter
- The Battery charger

## 2 General

The following General Sales Conditions apply to the Product(s) sold by Sensimed AG (hereafter SENSIMED).

The Product(s) will be delivered exclusively in countries where delivery coverage has been previously confirmed by SENSIMED.

Sales are final once the Customer's order, by email or by postal mail, has been accepted by SENSIMED in the form of an order confirmation sent by SENSIMED to the Customer.

Order confirmations from SENSIMED are only valid if written and sent by email or by postal mail. The order confirmation constitutes the sales contract to which the present General Sales Conditions apply. An order confirmed by SENSIMED according to the present provisions cannot be modified or cancelled by the Customer. The right to exchange the Product(s) within a week is reserved.

The Customer shall always read the General Sales Conditions before placing an order. Every order implies the acceptance without reserve of the present General Sales Conditions. These apply exclusively, without reserve, to the exclusion of any other conditions or arrangements made by the Customer.

The Product(s) are intended for professional use and for a specific medical purpose. SENSIMED will not be held responsible for the use of the Product(s) by unqualified personnel, or for use other than that specified on the User Manual of the Product(s).

It is the responsibility of the Customer to fully and accurately inform the patient about the nature, the significant risks and the anticipated outcome of the medical investigations or treatments involving the use of the Product(s). IN NO CASE SHALL SENSIMED BE LIABLE FOR ANY DAMAGE WHATSOEVER OCCURRING AS RESULT OF THE OMISSION OF THE CUSTOMER TO OBTAIN APPROPRIATE INFORMED CONSENT FROM THE PATIENT.

SENSIMED may at any time modify the present General Sales Conditions. The conditions in force at the time of the order confirmation shall apply to current sales contracts.

### **3 Validity and contract content**

The order is valid if it is placed by postal mail or by e-mail by a member of a care facility. Sensimed shall not have the obligation to check the Customer's powers and/or competence to place such order. The contract becomes effective only when confirmed by SENSIMED according to the description provided in the order acceptance. In case of divergences between the order acceptance and the order, it is the Customer's responsibility to inform SENSIMED of the nature of the divergences within twenty-four (24) hours from receipt of the order confirmation. If the Customer fails to duly inform SENSIMED, the terms of the order confirmation shall apply.

### **4 Prices, transportation and packaging**

Prices indicated are without VAT, but include packaging, transportation costs and insurance. Additional costs necessary for the delivery of the Product(s) to Customer are subject to a separate quotation from SENSIMED.

### **5 Payment and delivery deadline**

Any order shall be payable within thirty (30) days from delivery of the ordered Product(s). No discount will be accepted. Payments by Customer shall be net of fees. Fees, in particular bank fees, shall not be supported by SENSIMED and are the Customer's sole responsibility.

SENSIMED shall make its best efforts to deliver the ordered Product(s) as quickly as possible.

An indicative delivery deadline shall be specified by SENSIMED in the order confirmation. In case of delay in delivery, SENSIMED will immediately inform the Customer and confirm a new delivery date.

The Parties shall not be liable for failure to perform their obligations under the current applicable sales contract if such failure results from circumstances beyond Parties' reasonable control, including (without prejudice to the generality of the foregoing) strikes, war, civil riot, problems

affecting suppliers, transportation, fluctuation of exchange rates, acts of public authorities, or natural catastrophes such as flood or exceptionally inclement weather. Each party will be entitled to a reasonable extension of the deadline to perform its obligations under the current applicable sales contract.

If for reasons beyond its reasonable control SENSIMED were unable to deliver the ordered Product(s) within a reasonable delay, it shall be entitled to cancel the current sales contract without compensation.

## **6 Returns and claims**

The Customer is responsible for checking the Product(s) immediately upon arrival, and to report to SENSIMED any reservations or claims as to any potential flaws, non-conformity or damage. The said reservations or claims must be addressed to SENSIMED in writing as soon as possible but at the latest within forty-eight (48) hours from delivery, at SENSIMED SA by fax (+41 21 621 9193) or by e-mail to [sales@sensimed.ch](mailto:sales@sensimed.ch).

## **7 Privacy & Data protection**

The obtaining and saving of personal data gathered in the context of distance selling is necessary for the purpose of processing orders and delivering the Product(s) to the Customer as well as preparing invoices. The information gathered is strictly confidential and may be used exclusively by SENSIMED solely for Customer support and follow-up. In no case will such information be sold or disclosed to a third party. SENSIMED hereby commits to complying with all applicable laws and regulations on privacy and data protection.

## 8 Warranty

### 8.1 Overview

The warranty provisions of this Section 8 covers all obligations and liabilities on the part of SENSIMED, the Customer and other users of the Product(s), regarding any failure, defects or malfunction of any component of the Product(s). Customer

The warranty (as defined in Section 8.5) shall only apply to the following SENSIMED manufactured Product(s):

- The SENSIMED Triggerfish<sup>®</sup> Recorder (excluding the Battery)
- The SENSIMED Triggerfish<sup>®</sup> Data cable

The following accessories and consumables are not covered by the warranty (as defined in Section 8.5):

- The SENSIMED Triggerfish<sup>®</sup> Sensor
- The SENSIMED Triggerfish<sup>®</sup> Antenna
- The Bluetooth USB Adapter
- The Battery charger

Any defect, failure or malfunction affecting said accessories and consumables shall only be addressed in accordance with the procedure defined in Section 8.7 (Service Outside Warranty).

### 8.2 Responsibilities

The Customer or any third party using any of SENSIMED's Product(s) agrees to use it judiciously, only for its Intended Use as defined in Section 8.3 and takes responsibility for their actions and the results of their actions. If problems arise with a SENSIMED Product, SENSIMED will make all reasonable efforts to rectify them. This service may incur a charge, depending on the nature of the problems, and is subject to the provisions of Sections 8.4 and 8.5.

### 8.3 Intended Use

The SENSIMED Triggerfish<sup>®</sup> is indicated for continuous intraocular pressure monitoring up to 24 hours with glaucoma patients, patients at risk of glaucoma and/or patients with suspicion of high intraocular pressure, only in the countries accepting CE mark products.

### 8.4 General Limitations

SENSIMED Product(s) are produced to high standards, and should perform as described in the supplied documentation. There is a limited hardware warranty since Sensimed Product(s) could be affected by external factors.

No warranty either expressed or implied or statutory, other than that contained in these General Sales Conditions, is made in respect to Sensimed Product(s). The warranty remains valid only if the Customer uses Sensimed Product(s) according to the SENSIMED Triggerfish<sup>®</sup>'s User's Manual. Customer therefore assumes all risks as to the performance and reliability of the Product(s), and the results obtained using them. SENSIMED is not responsible for any problems with the computer system not directly related to SENSIMED Product(s).

SENSIMED neither assumes nor authorizes any person to assume on its behalf any liability in connection with the sale, installation, service or use of its Product(s). SENSIMED shall not be held responsible for special, consequential or punitive damages of any kind arising out of sale, installation service or use of its Product(s).

### **8.5 SENSIMED Triggerfish<sup>®</sup> Recorder & Data Cable Warranty**

SENSIMED warrants that the SENSIMED Triggerfish<sup>®</sup> Recorder ("Recorder") shall be free of defects in material and workmanship for two (2) years from the date of purchase when used, stored and maintained following User Manual and Direction for Use's instructions.

SENSIMED warrants that the SENSIMED Triggerfish<sup>®</sup> Data cable ("Data cable") shall be free of defects in material and workmanship for one (1) year from the date of purchase when used, stored and maintained following User Manual and Direction for Use's instructions.

No other express or implied warranty exists, including any warranty of merchantability or fitness for a particular purpose. This warranty does not cover the SENSIMED Triggerfish<sup>®</sup> battery charger or the USB Bluetooth adapter used with the Recorder and Data cable.

SENSIMED will repair or replace equipment under warranty as appropriate, and the duration of the warranty shall be extended by the length of time needed for repair or replacement, from the date the Complaint Form will be received by SENSIMED. To obtain service under this warranty, the Customer must notify the nearest SENSIMED Representative of the defect before the warranty expires. A SENSIMED Complaint Form must be filled by the Customer.

The shipment of the defective Product(s) will be arranged by the SENSIMED Representative at SENSIMED's charge. SENSIMED will also cover return shipping costs, only if the Product(s) has been used according to the SENSIMED Triggerfish<sup>®</sup>'s User's manual.

Customer shall not try to repair the Recorder itself or have it repaired by an unauthorized third party. Doing so will void the original warranty.  
Product(s)

## 8.6 Limited Liability

This warranty applies only to the Recorder and Data cable specified in these General Sales Conditions and used under normal operating conditions and within specification. Third party equipment is covered by its respective manufacturer's warranty. This warranty does not cover hardware modified in any way, subjected to unusual physical, electrical or environmental stress, used with incorrectly wired or substandard connectors or cables, or with the original identification marks altered.

SENSIMED does not warrant that equipment is suitable for any specific purpose, other than that explicitly stated by Sensimed in the SENSIMED Triggerfish® User Manual.

UNDER NO CIRCUMSTANCES WILL SENSIMED BE LIABLE TO THE CUSTOMER, OR ANY OTHER PERSON OR ENTITY, FOR ANY LOSS OF USE, REVENUE OR PROFIT, LOST OR DAMAGED DATA, OR OTHER COMMERCIAL OR ECONOMIC LOSS OR FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, STATUTORY, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER RELATED TO CUSTOMER'S USE OR RELIANCE UPON THE PRODUCT(S), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE. THIS LIMITATION SHALL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL OR MATERIAL BREACH OR A BREACH OF THE FUNDAMENTAL OR MATERIAL TERMS OF THESE GENERAL SALES CONDITIONS. SENSIMED'S AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS WARRANTY SHALL BE LIMITED TO THE AMOUNT PAID FOR THE PRODUCT, IF ANY. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.

## 8.7 Service Outside Warranty

In case of failure affecting any component of the Product(s) outside the scope of warranty as defined in Section 8.5, a Sensimed Complaint Form shall be filled in by the Customer and the diagnose of the failure, its cause and extend of the damage will be assessed by SENSIMED. SENSIMED will submit a proposal of recommended action including repair costs if any. Repair will be done only upon prior written consent of the Customer. The repair and service costs will be charged to the Customer.

## 8.8 Inquiries

For additional information or service inquiries, the Customer shall contact its Sensimed Representative or an Authorized Distributor. For contact details see [www.sensimed.ch](http://www.sensimed.ch).

## 9 Software Licence

The Customer has the non-exclusive right to use the supplied SENSIMED Software ("Software") Customer's employees or students are entitled to use the Software, provided they adhere to these General Sales Conditions.

Each separate purchase of the license of the Software allows the Customer to install and use the Software on one (1) computer. Accordingly, the Software may be used for analysis purposes on one (1) computer for each license purchased.

SENSIMED reserves the right to modify and update the Software at any time. Any modification or update shall replace the previous versions of the Software and is subject the terms of these General Sales Conditions or, as the case may be, the license accompanying said modification or update. Accordingly, the license granted on all prior versions of the Software is automatically terminated.

## 10 Applicable law and jurisdiction

Any disputes arising with respect to or in connection with all sales contracts covered by these General Sales Conditions shall be within the exclusive competence of the courts of the State of Vaud, Switzerland.

All sales contracts covered by these General Sales Conditions shall be construed in accordance with and governed by the internal laws of Switzerland, without giving effect to principles of conflict of laws.

## 11 Miscellaneous

Any waiver by SENSIMED of any violation of these General Sales Conditions by Customer shall not constitute, nor contribute to, a waiver by SENSIMED of any other or future violation by Customer of the same provision, or any other provision, of these General Sales Conditions.

If any part of these General Sales Conditions or the application thereof to any person or circumstance is for any reason held invalid or unenforceable, it shall be deemed severable, and the validity of the remainder of these General Sales Conditions, or the applications of such provision to other persons or circumstances, shall not be affected thereby.