

# Terms and Conditions

Sense IOT offers wireless sensors to monitor environmental conditions in commercial and industrial spaces. Together with our software, our products allow you to monitor and receive notifications about the conditions in your premises.  
These terms and conditions, together with your purchase orders for products, forms your agreement with us.

## 1. Application of Terms

These Terms apply to any purchase of Hardware, Software or Support from Sense IOT. By submitting an order to Sense IOT, you acknowledge and agree that you have read, understood and agree to be bound by these Terms.

## 2. Hardware

### Our Sensors

We offer a range of wireless sensors to monitor different environmental factors including temperature, humidity, water, motion, voltage, light, pressure, carbon monoxide and opening/closing of doors and windows.

When you purchase any sensor from us, you will pay a one-off purchase price before the product is shipped to you.

When you submit a purchase order to us, we will send you an order confirmation which will include key details about your products and estimated delivery date.

### 2.1 Delivery by Sense IOT

- (a) Sense IOT will use its reasonable endeavours to supply all Hardware to you by the Estimated Delivery Date and in the manner specified in the Order Confirmation.
- (b) If Sense IOT is delayed in supplying the Hardware to you then it must notify you of the delay and of the revised Delivery Date.

### 2.2 Payment Terms

- (a) You must pay the Fees, together with any reasonable shipping and handling charges, in accordance with the Order Confirmation and the Invoice issued for your purchase order.
- (b) If the Customer does not make payment in accordance with the Order Confirmation, Sense IOT is entitled to do any or all of the following:
  - (i) charge interest on the outstanding amount at a rate equivalent to the reference rate charged by Sense IOT's principal bank, accruing daily;
  - (ii) require the Customer to pay in advance for any Hardware which have not yet been provided; and
  - (iii) not provided any further Hardware.

### 2.3 Title to and use of the Hardware

- (a) Title in the Hardware will pass to you upon delivery.
- (b) For the avoidance of doubt, this Agreement does not transfer of assign ownership of any IP rights in the Hardware to you.
- (c) You must not, and must not procure any person to:
  - (i) attempt to repair the Hardware;
  - (ii) modify the Hardware;
  - (iii) reverse engineer or disassemble the Hardware for the purpose of creating a copycat product or a derivative product; or
  - (iv) remove any proprietary or copyright notices affixed to or incorporated into the Hardware or the Documentation.

### 2.4 Third party carriers

You acknowledge and agree that:

- (a) we use third party carriers to deliver the Hardware;
- (b) you are bound by and will comply with the third party carrier's terms and conditions and any policies applicable to the delivery of the Hardware; and

- (c) we are not liable for Hardware that is damaged or lost in transit.

## 3. Software

### Our Software

You can subscribe to use our software to manage and monitor your network of sensors quickly and easily from your phone or computer.

To make sure that you only pay for what you need, you can choose a subscription package that matches the needs of your business including by the number of users and sensors you need.

Details of our subscription packages are available on our website and are governed by the terms below.

### 3.1 Software licence

Sense IOT grants you a non-exclusive, non-assignable, revocable and non-sublicensable licence during the Term to use the Software to the extent necessary to use the Hardware, and subject to your subscription package and compliance with the EULA.

### 3.2 Licence Fees

- (a) When you submit your order, you will be asked to choose your Software subscription package (**Package**) for the payment of the Licence Fees.
- (b) Packages are for 12 months, paid in advance, and may be limited by:
  - (i) the number and/or type of device the software may be used on;
  - (ii) the number of user accounts;
  - (iii) the number of sensors;
  - (iv) the number of email and SMS notifications; and
  - (v) data storage.
- (c) The Licence Fees will vary depending on your Package. Current Licence Fees for each Package will be displayed on the Website and updated from time to time.
- (d) Subscriptions will automatically renew on the same terms at the end of each subscription period unless or until you cancel or otherwise modify your subscription in accordance with these Terms.
- (e) You are responsible for:
  - (i) ensuring that your billing information is kept up to date;
  - (ii) ensuring that your nominated back account has sufficient funds to meet the payments; and
  - (iii) paying all bank fees, including fees charged by your bank for an overdraft of your account as a result of a payment pursuant to these Terms.
- (f) If any payment fails, you are responsible for any reasonable administration fees including any fees for the dishonoured direct debit or failed payment.
- (g) If you default on a payment, then we may suspend your access to the Software and Support until such time as the outstanding Licence Fees are paid.
- (h) Information about the Licence Fees and payment terms are available on the Website and in the Order Confirmation.

### 3.3 Cancellation or variation

- (a) You can cancel or modify your subscription by emailing [accounts@senseiot.com.au](mailto:accounts@senseiot.com.au).
- (b) You will not be charged a cancellation fee.
- (c) If you cancel your Software subscription, you will continue to have access to the Software for which you have paid. To the maximum extent permitted by applicable law, you will not be eligible for a pro-rated refund of any portion of the Licence Fees paid.

### 3.4 Use of the Software

- (a) In addition to any restrictions in the EULA, you must not directly or indirectly, and must not procure any person to:
  - (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of

the Software except to the extent you may be expressly permitted to decompile under applicable law;

- (ii) use the Software to develop copycat or functionally equivalent software or derivative software based on the IP embodied in the Software;
- (iii) combine or incorporate the Software with or into other software; or
- (iv) provide or make the Software available to any third party without Sense IOT's prior written approval.

(b) The Software and Documentation remains the property of Sense IOT or its licensors, as the case may be. You acknowledge that you do not own any IP rights in the Software or Documentation.

### 3.5 Compliance with EULA

You must at all times comply with the EULA. If you require a copy of the EULA, you can request one by writing to [accounts@senseiot.com.au](mailto:accounts@senseiot.com.au).

## 4. Support

Sense IOT will provide the following services during the Term:

- (a) reasonable assistance, as requested by you, in relation to the operation and maintenance of the Hardware;
- (b) repair of the Hardware (to the extent reasonably possible by Sense IOT) when damage is caused by misuse or accident at your request and cost;
- (c) reasonable assistance as you request, in relation to the Software; and
- (d) updates and bug fixes to the Software as they become available.

## 5. Warranty Information

We stand behind our products and software.

If you use our sensors properly, we commit to you that our sensors will, for at least 1 year, be functional and free from any defects.

Similarly, we confirm that, for at least 1 year, our software will comply with the specifications and have the features listed on our website.

### 5.1 Hardware

- (a) Subject to clause 6.1(c), Sense IOT warrants that, as at the Delivery Date and for a period of 1 year from the date of shipment, the Hardware will be free from defects in materials or workmanship for the Warranty Period. If any defects in the materials or workmanship appear within the Warranty Period, then Sense IOT will, at its option, repair or replace the defective components or the Hardware.
- (b) The express warranties given by Sense IOT under clause 6.1(a) will only apply if:
  - (i) Sense IOT is notified in writing within 14 days of the discovery of any relevant defects; and
  - (ii) Sense IOT is satisfied that the Hardware has been properly handled, installed, operated and maintained in accordance with any requirements set out in the Documentation.
- (c) The express warranties given by Sense IOT under clause 6.1(a) will not apply if the defect to the Hardware arises from:
  - (i) neglect or abuse of the Hardware by you or any other person (other than Sense IOT); or
  - (ii) interfacing with other equipment, software or components not supplied or expressly approved by Sense IOT;
  - (iii) any re-configuration or modifications by you or any other person (other than Sense IOT Personnel) of any part of the Hardware; or
  - (iv) movement or installation of the Hardware except in accordance with the requirements set out in the Documentation; or

- (v) any other extraneous circumstances outside Sense IOT's control; and
- (vi) any cost or expense incurred by Sense IOT in detecting or isolating such causes of non-performance or malfunction or damage will be borne by you.

### 5.2 Documentation

Any Documentation supplied with the Hardware is provided as a guide only and may not be complete.

### 5.3 Software

- (a) Sense IOT warrants that:
  - (i) it has all necessary licences, permits and consents to enter into and provide the Hardware, Software and Support and to grant the licence in clause 4; and
  - (ii) the Software will materially conform to the specifications published on the Website; and
  - (iii) use and enjoyment of the Hardware and Software by you will not infringe the IP rights of any person.
- (b) You acknowledge and agree that Sense IOT has not made any warranty, representation or undertaking that the Software or Support will be free from error, defect, interruption or viruses.
- (c) Except as expressly provided in this Agreement or in your relevant subscription Package, Sense IOT has no obligation to provide you with any ongoing updates, bug fixes or other support services for the Software beyond the Term.

### 5.4 Implied terms

- (a) Subject to clause 6.4(b), any condition or warranty which would otherwise be implied in this Agreement is excluded.
- (b) Pursuant to s64A of the Australian Consumer Law, this clause applies regarding any services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption. Liability for breach of a guarantee conferred by the Australian Consumer Law is limited:
  - (i) to re-supplying the Hardware, Software or Support (as applicable); or
  - (ii) making full payment for the cost of having the Hardware, Software or Support (as applicable) supplied again.

## 6. Obligations of the Customer

You must:

- (a) comply with all Laws;
- (b) co-operate with and provide all assistance reasonably required by Sense IOT;
- (c) provide all necessary information required by Sense IOT to provide the Support; and
- (d) ensure that it does not cause or contribute to any matter or circumstance that is likely to give rise to an Infringement Claim.

## 7. Obligations of Sense IOT

Sense IOT will:

- (a) perform its obligations under this Agreement with due care, skill and diligence and ensure the Sense IOT Personnel are appropriately skilled and qualified; and
- (b) comply with all Laws.

## 8. Taxes and GST

### 8.1 Liability for Taxes

The Customer is liable for all Taxes arising from or relating to this Agreement and must pay:

- (a) Taxes which are imposed on Sense IOT, directly to the relevant government agency; and
- (b) Taxes which are imposed on the Customer, directly to the relevant government agency on behalf of Sense IOT, on or before the latest date that the Tax is due for payment without incurring any penalty, interest or additional Tax for late payment.

### 8.2 GST

- (a) The Customer acknowledges that the Fees and Licence Fees are exclusive of any GST.

- (b) If GST is payable in respect of a supply made under or in relation to this Agreement, the recipient must pay to the supplier an amount equal to the GST payable on the supply (**GST Amount**). The GST Amount is payable by the recipient in addition to and at the same time as any consideration for the supply, provided the supplier has given the recipient an Invoice.

## 9. Confidential Information

During the Term, each party:

- (a) must keep the other party's Confidential Information confidential;
- (b) may not use the other party's Confidential Information except as may be expressly permitted by that other party;
- (c) must not disclose the other party's Confidential Information except to the extent required by law to be disclosed, provided the receiving party first gives notice of the disclosure to the other party; and
- (d) must promptly notify the other party if it becomes aware of any unauthorised use or disclosure of the other party's Confidential Information, of if the other party's Confidential Information is being handled, used or stored in a manner that risks the unauthorised copying, use or disclosure of that Confidential Information (whether that disclosure is oral, in writing or in any other form).

## 10. Indemnity

- (a) You:
  - (i) agree that access to and use of the Hardware and Software is at your own risk; and
  - (ii) Sense IOT will not be liable for any loss or cost suffered or incurred by you while accessing or using the Hardware or Software;
  - (iii) indemnify Sense IOT against all losses and claims arising from or incurred in connection with any loss caused or contributed to by your access to or use of the Hardware or Software or your breach of this Agreement, except to the extent required or expressly authorised by Sense IOT; and
  - (iv) agree that Sense IOT will not be liable to you for any Consequential Loss arising from the provision of Support or your use of the Hardware or Software.
- (b) Sense IOT accepts no liability or responsibility for incorrectly placed orders, or inaccurate or incomplete delivery details or instructions provided by you.

## 11. Force Majeure

- (a) If a Force Majeure Event prevents Sense IOT from supplying the Hardware or Software or providing the Support, Sense IOT will provide you with a written notice of the Force Majeure Event and the anticipated impact on Sense IOT's performance of its obligations under this Agreement.
- (b) If a Force Majeure Event continues for more than 15 Business Days, either party may terminate the Agreement by written notice to the other without liability for damages of any kind, including for Consequential Loss.

## 12. Dispute Resolution

- (a) The parties must use reasonable endeavours to resolve any dispute, controversy or claim arising out of, relating to or in connection with the Agreement through negotiation between them.
- (b) If, after 15 Business Days of the disputing party notifying the other party, the dispute cannot be negotiated between the parties, either party may refer the dispute for arbitration through the Australian Disputes Centre (**ADC**).
- (c) The arbitration will be conducted in Melbourne, Australia in accordance with the ADC Rules for Domestic Arbitration operating at the time the dispute is referred to the ADC (the **Rules**).
- (d) The terms of the Rules are deemed incorporated into this Agreement.
- (e) This clause shall survive termination of the Agreement.

## 13. Termination

- (a) Either party may terminate this Agreement by notice with immediate effect if the other party:
  - (i) commits a material breach of the Agreement that is not capable of remedy; or
  - (ii) commits a material breach of the Agreement capable of remedy and does not remedy that breach within 10 Business Days after receipt of notice of the breach.
- (b) Upon termination or expiry of this Agreement, all licences granted under this Agreement, and all rights and obligations under clause 5, cease.
- (c) Expiry or termination of this Agreement for any reason does not affect any rights of either party against the other which arose prior to the time at which such termination or expiry occurred, or which otherwise relate to or which may arise at any future time for any breach or non-observance of obligations under this Agreement occurring prior to the termination or expiry.
- (d) Clauses 3.3(c), 6, 4.5, 11 and 13 will survive the termination or expiry of this Agreement and will continue to apply.

## 14. General

### 14.1 Notice

- (a) A notice, consent, approval, waiver or other communication provided in connection with this Agreement must be in writing (**Notice**).
- (b) A Notice may be given by hand delivery, post or by email and is effective upon receipt.

### 14.2 Entire agreement

The Agreement represents the entire agreement between the parties and supersedes all prior discussions, negotiations, understandings and agreements in relation to the subject matter of this Agreement.

### 14.3 Assignment

- (a) The Customer must not assign or otherwise deal with all or any part of its rights or obligations under the Agreement.
- (b) Sense IOT may assign or otherwise deal with any of its rights or obligations under the Agreement without the Customer's prior consent.

### 14.4 Waiver and variation

A provision of the Agreement, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party or parties to be bound.

### 14.5 Rights, powers and remedies cumulative

The rights, powers and remedies given in the Agreement are in addition to other rights, powers and remedies given by law independently of the Agreement.

### 14.6 Severability

If any provision is unenforceable or invalid, it will be ineffective to the extent it is unenforceable or invalid, without affecting the validity or enforceability of the remaining provisions of the Agreement.

### 14.7 Survival

Termination or expiration in whole or in part of the Agreement does not affect those provisions and those obligations of a party which by their very nature survive termination, including clause 9 (Taxes), clause 10 (Confidential information), clause 6 (Warranties), clause 11 (Indemnity and infringement claims), clause 13 (Dispute resolution), clause 11 (Indemnity) and clause 15.8 (Governing law and jurisdiction).

### 14.8 Governing law and jurisdiction

- (a) This Agreement is governed by the laws in force in Victoria, Australia.
- (b) The parties submit to the exclusive jurisdiction of the courts of Victoria, Australia.

## 15. Definitions and interpretation

### 15.1 Definitions

The following definitions apply to this Agreement:

**Agreement** means the agreement between you and Sense IOT for the supply of the Software, Hardware and the Support under and in accordance with these Terms and Conditions.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whether present or future, fixed or unascertained, actual or contingent, at law, in equity, under statute or otherwise.

**Customer, you, your** means the party acquiring the Hardware, Software and Support from Sense IOT and, as the context requires, its Representatives.

**Confidential Information** of a party means:

- (a) this Agreement and the information within this Agreement;
- (b) all information, know-how, ideas, concepts, technology, data, source or object code, designs, functions, features and performance notes, technical data and marketing information such as customer lists, financial information and business plans which is disclosed, communicated or delivered to, learnt by, or which otherwise comes to the knowledge of or into the possession of the other party under or in connection with this Agreement,

but does not include:

- (c) information which is or becomes generally available in the public domain (other than through any breach of confidence);
- (d) information received by the other party other than as a result of a breach of any duty of confidence owed to the first party; or
- (e) information which has been independently developed by the other party.

**Consequential Loss** means the following, however arising and even if it is reasonably contemplated by the parties at the Commencement Date as a likely result of breach of the Agreement:

- (a) incidental, special, remote or unforeseeable loss or damage;
- (b) loss of revenue, profit, income, bargain, opportunity, use, production, business, contract, goodwill, or anticipated savings, loss caused by business interruption, or the cost of obtaining new financing or maintaining existing financing, but excluding loss of any amounts that would, but for the act or omission of a party, have otherwise been payable under this Agreement;
- (c) costs or expenses incurred to prevent or reduce loss or damage which otherwise may be incurred or suffered by a third party; or
- (d) loss or damage of the nature set out above in clauses (a) to (c) (inclusive) that is incurred or suffered by or to a third party.

**Commencement Date** means the date on which the Customer enters into the Agreement with Sense IOT by placing an order for Hardware and/or Software.

**Delivery Date** means that actual date that the Hardware and Software are delivered to you.

**Documentation** means any documentation about the Hardware or Software including any user manuals.

**EULA** means Sense IOT's end user licence agreement, as amended by Sense IOT from time to time.

**Estimated Delivery Date** means the date of delivery of the Hardware to you as specified in the Order Confirmation.

**Fee** means the fees for the Hardware and Support.

**Force Majeure** means anything outside the reasonable control of a party regardless of whether it is reasonably contemplated by the parties at the Commencement Date as a likely result of breach of the Agreement.

**GST** means the goods and services tax imposed by *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**).

**Hardware** means any products, equipment, accessories or other goods to be supplied by Sense IOT to you as set out in the Order Confirmation.

**Infringement Claim** is any actual, threatened or potential claim, demand, proceeding, suit, objection or other challenge:

- (a) affecting either parties' ownership of, or rights in, that party's background IP; or
- (b) claiming that the supply or other use of a party's background IP, infringes or may infringe the IP rights of a third party.

**Invoice** has the meaning given to that term in the GST Act.

**Intellectual Property or IP** means all rights conferred under statute, common law or equity, wherever in the world subsisting, in relation to trade marks, copyright, patents, patentable inventions and designs, whether existing now or in the future and whether or not registered or registrable, and includes any rights subsisting in or relating to Confidential Information, trade secrets, know-how, inventions, discoveries, geographical indications of origin, semiconductor and circuit layouts, programming tools, object code, source code, microcode, mask works, methods, techniques, recipes, formulae, algorithms, modules, libraries and databases and further includes the right to apply for the registration or grant of any such intellectual property.

**Licence Fees** means the licence fees which are payable by you to Sense IOT for the licensing of the Software by Sense IOT to you, as set out in the Order Confirmation.

**Laws** means the common law (including equity), current and future Acts of the Parliament of the Commonwealth of Australia, or of the Parliament of Queensland, and related regulations or statutory instruments or similar.

**Order Confirmation** means the email confirmation sent to you by Sense IOT confirming your order and delivery details.

**Representative** means, in respect of a party, any person acting for or on behalf of the party and includes any director, officer, employee, agent, contractor or sub-contractor of the party.

**Sense IOT, we, us, our** means Sense IoT Pty Ltd ACN 627 251 352, its Representatives and, if the context requires, the Sense IOT Personnel.

**Sense IOT Personnel** means those employees or contractors engaged by Sense IOT to provide the Support.

**Software** means the software to be provided or made available to you by Sense IOT, as specified in the Order Confirmation.

**Support** means the support services provided by Sense IOT to you, as set out in the Order Confirmation.

**Taxes** means taxes, levies, imposts, charges and duties (including, stamp and transaction duties) imposed by any government agency, together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the overall net income of the Customer or Sense IOT but excluding GST.

**Terms** means these terms and conditions contained on the Website, as amended by Sense IOT from time to time.

**Warranty Period** means the period of the warranty for the Hardware as specified in the Order Confirmation.

**Website** means [www.senseiot.com.au](http://www.senseiot.com.au).

## 15.2 Interpretation

In this Agreement:

- (a) no provision of this Agreement will be construed to the disadvantage of a party merely because that party was responsible for preparing this Agreement or including the provision in this Agreement;
- (b) all monetary amounts are expressed in Australian Dollars (\$AUD); and
- (c) the parties must perform their obligations on the dates and times fixed by reference to Victoria, Australia.