

General terms and conditions

Last update: 21/01/2021

SENSETORY GmbH,
Lindenstraße 14, 50674 Cologne
Management: Hanswerner Bendix, Christian Frens
Registration Court Local Court of Cologne, HRB 97321

1. Validity

- 1.1. These General Terms and Conditions ("GTC") shall apply to the entire business relationship between SENSEATORY GmbH, Lindenstraße 14, 50674 Cologne ("SENSETORY") and the client, as far as the client is an entrepreneur in the sense of Section 14 of the *Bürgerliches Gesetzbuch* ("BGB") [German Civil Code] or a legal entity under public law.
- 1.2. These GTC shall apply exclusively. Deviating or conflicting conditions shall not be accepted by SENSEATORY, unless SENSEATORY has explicitly agreed to them in writing. This shall also apply if the client's offer is submitted with reference to the overriding validity of the General Terms and Conditions.
- 1.3. These terms and conditions shall be considered to be accepted at the latest with the acceptance of the services of SENSEATORY.
- 1.4. Additional agreements, promises or other declarations of any kind on the part of SENSEATORY employees shall only be binding if they are expressly confirmed at least in text form.
- 1.5. These GTC shall also apply in their current version to all future transactions with the client. The current version of the terms and conditions is available on the internet at [<https://sensetory.com/agb/>].

2. Subject matter of the contract

- 2.1. The subject matter of the contract refers to all services that

SENSETORY performs for the client.

- 2.2. This includes in particular testing services within the framework of a standardised sensory quality control of foodstuffs (e. g. wines, sparkling wines, wine-based beverages, spirits, coffee, juices, beer) developed by the testing institute and the preparation of textual and / or visual descriptions of products for marketing purposes and advice relating to product range and products.

3. Test system

- 3.1. Sensory analyses are prepared according to a testing system developed by SENSEATORY (SENSETORY Analytics).
- 3.2. SENSEATORY Analytics is characterised by the definition of a systematic testing of the products on the basis of the test categories selected by the testing institute, which allow a sensory evaluation of the test sample on a scale to determine the quality of contract products to be achieved by experts from the foodstuff sensor technology (including wine academics, oenologists, winemakers, sommeliers; brewmasters, bartenders) on the basis of samples and works with selected standardised evaluation terms, product-specific target scores and defined descriptions.
- 3.3. Within the framework of comparative tastings with samples to be submitted, comparisons can then be made with products, which also make deviations or similarities clear quickly and easily in a specific presentation and provide for a

simple and clear evaluation compilation in the case of competing products.

4. Analysis services

4.1. In the context of representational tastings, sensory sample analyses of contract products shall be created on the basis of samples ("product profile" or "sample profile") or existing product profiles shall be used. If necessary, the customer has to provide SENSATORY with samples. Product profiles shall be given corresponding reference values by SENSATORY in the standardised categories as an expression of the parameters predefined by SENSATORY. The results shall be recorded in a test report (TEST REPORT DESCRIPTIVE TASTING).

4.2. Comparative tastings to other samples shall be carried out as a comparison against the individual specifications in the corresponding product profiles in the form of test reports (TEST REPORT COMPARATIVE TASTING).

4.3. The results of several tests, for example when testing competing products, can be made available as a summary in a simple form after a separate order.

4.4. Product profiles, in turn, shall be subject to adjustment processes, for example if client preferences change or if, due to events at the place of origin, changes in the product mean that the reference character of the reference sample analysis no longer appears to be maintained for future comparisons.

4.5. SENSATORY shall perform the tests according to its own dutiful discretion.

5. Test results

5.1. SENSATORY shall provide the test results (product profiles, test reports of a comparative or illustrative tasting, summaries) to the client in electronic form within the frame-

work of the presentation developed by it.

5.2. The client may designate additional persons who may receive a personalised test result. In case of doubt, the determination shall also apply to further results for the same sample.

5.3. Information or clarifications given orally or by telephone shall not be binding.

5.4. The way in which the data is made available (unencrypted email transmission, retrieval via protected account, database retrieval with research options) shall be determined by SENSATORY. Other transmissions than those via email can be charged separately according to the current price list of SENSATORY and require the acceptance of terms of use. In the absence of separate understandings, callability shall not be owed for a period longer than 3 weeks from the notification of callability.

6. Offers, conclusion of contract, form

6.1. The contract shall come into effect when SENSATORY confirms an order from the client at least in text form or executes a service order, which is created on the SENSATORY test order form without changes to the content using the selection options. The customer shall be bound to his order for a maximum of 2 weeks. If the test order is for a COMPARATIVE TASTING where several suppliers submit their samples, the commitment period shall be extended to 4 weeks.

6.2. In case of doubt, the content of the order confirmation of SENSATORY shall be valid.

7. Reservation of rights

7.1. SENSATORY GmbH expressly reserves all rights to the expert opinions, test results, test reports, calculations, etc. prepared by

- SENSETORY. Expert opinions, test results and test reports may only be used in unchanged and un-abridged form and content without the prior consent of SENSEATORY and only for the contractually agreed purpose.
- 7.2. In case of doubt, the client's right to use an analysis shall be limited to the confidential use of an impartial quality judgement as a basis for product-related purchasing and / or sales purposes between the parties specified in the order. Included is the possibility for an importer to also share the analysis with the producer, who can use the analysis to improve their products and offerings.
 - 7.3. The right of use for further purposes, such as the passing on to third parties, the use for advertising purposes, the right of making publicly available or the use of the reference values or other individual values within the framework of other presentations or further purposes shall require the explicit consent of SENSEATORY at least in text form.
 - 7.4. In any case, a right of use shall be granted as a simple right of use, unlimited in time and place.
 - 7.5. In particular, SENSEATORY reserves the right to use data on the samples for verification purposes, archiving purposes, for later utilisation for the client and / or the third parties listed in the order as authorised to receive the data, as well as in anonymised form for further business purposes, in particular statistical evaluations.
 - 7.6. In the case of other protectable works by SENSEATORY, such as texts, graphics, photographs, videos (e. g. tasting film contributions), SENSEATORY shall remain entitled in any case to use the performance results itself for advertising purposes, either in whole or in excerpts, without any time or place restrictions or limitations of the medium, and to carry out necessary adaptations of the works for this purpose (e. g. shortening, trimming, format transfer, scaling).
8. **Remuneration**
 - 8.1. The remuneration for services provided by SENSEATORY shall be calculated according to the current price list, which the client can request from SENSEATORY at any time. Prices shall be quoted net ex SENSEATORY office in euros plus the applicable statutory value added tax.
 - 8.2. In case of doubt, the client shall be jointly and severally liable to SENSEATORY for the remuneration, even if the remuneration is to be settled via a third party.
 - 8.3. Unless agreed otherwise, invoices from SENSEATORY shall be payable within 7 days without deduction. A payment shall only be deemed to have been made when SENSEATORY can dispose of the amount.
 9. **Warranty**
 - 9.1. SENSEATORY shall guarantee that the examinations within the framework of the SENSEATORY Analytics testing system are carried out objectively and impartially.
 - 9.2. Analytical services shall be limited to sensory (e. g. haptics, smell, taste, colour) tests and do not include, in particular, chemical analytical tests and determinations of, for example, ingredients and the actual origin of the sample.
 - 9.3. Foodstuff shall be subject to quality fluctuations caused, for example, by the type of production, transport, packaging and storage or by environmental influences such as light and heat, which can only be influenced to a limited extent. For these reasons alone, the analysis results shall represent a statement limited to the tested sample in the condition of delivery, which in this respect is only representative to a limited extent for further deliveries

- and / or other test quantities (e. g. withdrawal lots, stock goods). Due to the sampling procedure, SENSETORY shall not guarantee that the samples are representative for certain test quantities.
- 9.4. With its analyses, SENSETORY does not guarantee freedom from other product defects or other compliance with quality specifications of third parties. SENSETORY shall also not check the compliance with information obligations or other declarations of the products.
- 9.5. SENSETORY shall be liable for material defects and defects of title according to the regulations of the *BGB* [German Civil Code] for the contract for work and services, but the client must first assert the rights to subsequent performance. If this is unsuccessful, the customer shall be entitled to the other defect rights (withdrawal, reduction, compensation).
- 9.6. The statutory provisions shall apply with the proviso that a warranty shall be limited to defects occurring within one year of the commencement of the limitation period (liability period). The period for exercising rights in this respect (limitation period) shall remain unaffected. The following obligations to give notice of defects must be observed.
- 9.7. Clients must report obvious defects in writing without delay, but at the latest within a period of 14 days from receipt of the service. In the event of the discovery of non-obvious defects, the obligation to give notice of defect without delay, at the latest within 14 days from the discovery of the defect, shall apply. For the preservation of the rights of the buyer the punctual dispatch of the notification shall be sufficient. Otherwise, the performance shall be deemed to have been approved also in view of the respective defect. For merchants, Section 377 *HGB* [German Commercial Code] shall apply in addition.
- 10. Deadlines and periods**
- 10.1. The deadlines and periods stated by SENSETORY shall be non-binding, unless expressly agreed otherwise in text form.
- 10.2. Binding delivery and service deadlines promised by SENSETORY shall not begin before final clarification of all details of the order, provision of samples, approvals, releases to be provided by the client and / or receipt of an agreed payment by SENSETORY.
- 11. Liability**
- 11.1. In case of intent or gross negligence of SENSETORY (representatives or vicarious agents) SENSETORY shall be liable according to the legal regulations; likewise in case of culpable violation of essential contractual obligations.
- 11.2. As far as there is no intentional or grossly negligent violation of an essential contractual obligation, SENSETORY's liability for damages shall be limited to the amount of the foreseeable, typically occurring damage.
- 11.3. Liability for culpable injury to life, limb or health as well as liability under the *Produkthaftungsgesetz* [German Product Liability Act] shall remain unaffected.
- 11.4. As far as not explicitly regulated otherwise above, liability of SENSETORY shall be excluded.
- 11.5. In particular, SENSETORY shall not be liable for lack of economic success, loss of profit and indirect damages.
- 12. Sample receipt, storage, disposal**
- 12.1. The customer shall be obligated to make all hazard and handling instructions for test samples (specimens) available to SENSETORY in due time prior to a transmission of the samples and - as far as known to him - to provide information

about the chemical composition of the samples. Samples and / or test specimens containing hazardous substances must be labelled in accordance with the *Gefahrstoffverordnung* [German Hazardous Substances Ordinance]. The client shall be liable for any damage resulting from a hazardous nature of the sample material.

- 12.2. If test samples (specimens) are required, the supplier sends them to SENSEATORY at his own risk in at least two copies (e. g. 2 bottles of wine per test sample). SENSEATORY shall use a sample of its own choice for the ordered analysis. The second sample can be stored by SENSEATORY as a so-called reserve sample.
- 12.3. Unless otherwise agreed, SENSEATORY shall become the owner of the samples provided. A fee for the samples shall not be owed by SENSEATORY.
- 12.4. SENSEATORY shall carry out storage of the sample material without special instructions in the usual form for the sample without any special effort. Storages according to separate instructions may be subject to charges according to the general price list.
- 12.5. SENSEATORY shall be entitled at any time to dispose of samples after analysis or to request the client to carry out disposal and to have the samples collected for this purpose. The costs and risk of disposal and transport shall be borne by the client.

13. Data protection, data retention

- 13.1. SENSEATORY will only process personal data according to the legal regulations. Reference is made to the data protection declaration of SENSEATORY, available at [<http://www.sensetory.com/datenschutz-inweis>].
- 13.2. Other order related data (reference values, analysis results) can be stored and used by SENSEATORY

for an unlimited period of time after the termination of the order (see number 7.5.). A claim of the client to storage and permanent retrievability shall not exist outside of separate agreements in this regard.

- 13.3. The transfer of data to third parties shall be permissible if and insofar as this is the subject of the contract.

14. Applicable law, jurisdiction

- 14.1. The law of the Federal Republic of Germany shall apply to these provisions and the legal transactions carried out under their application.
- 14.2. Exclusive place of jurisdiction for any and all disputes arising from or in connection with this contract shall be the registered office of SENSEATORY. SENSEATORY shall also be entitled to sue at the defendant's domicile.

15. Final provisions

- 15.1. Changes to this contract or its components must be made in writing, unless otherwise stipulated in these provisions. This shall also apply to a change of this clause.
- 15.2. Should individual provisions of this contract be invalid or unenforceable in whole or in part or become invalid or unenforceable after the contract was concluded, this shall not affect the validity of the remaining contract. The invalid or unenforceable provision shall be replaced by such valid and enforceable regulation the effects of which come closest to the economic objective the contractual parties have pursued with the invalid and / or unenforceable provision. The aforementioned provisions shall apply accordingly if this agreement includes any gaps.