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**FRAMEWORK AGREEMENT FOR THE PROVISION  
OF THE SENSXPERT-SYSTEM**

**STATUS: JULY 2023**

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## § 1

### Scope of application

- (1) This framework agreement applies to the provision of the sensXPERT-system by Netzsch Process Intelligence GmbH, Gebrüder-Netzsch-Straße 19, D-95100 Selb (hereinafter referred to as "NXP"), which is made available to the customer for use limited to the period of time of the term of the contractual relationship.
- (2) The framework agreement applies exclusively to the provision of the sensXPERT-system. Deviating, conflicting or supplementary terms and conditions of the customer, for example in the form of general terms and conditions (GTC), shall only become part of the contract if and to the extent that NXP has expressly agreed to their application. This shall also apply if the customer refers to its GTC in the context of the order confirmation and NXP does not expressly object to their application.
- (3) The framework agreement shall apply in the version in effect at the time of the customer's order, unless an amended version of the framework agreement notified to the customer has subsequently become effective.
- (4) The framework agreement shall also apply to all future transactions between the customers and NXP, even if no express reference is made thereto again.
- (5) Individual agreements between NXP and the customer (collectively hereinafter referred to as the "Parties") shall prevail without prejudice to the further provisions of the framework agreement.

## § 2

### Definitions

In this agreement, the following terms shall have the meanings ascribed to them herein, unless otherwise expressly stated in any particular case:

- (a) "**Edge Device**" describes the hardware component of the sensXPERT-system. The Edge Device is provided to the customer as a general plug-and-play solution. Any sensor technology for the specific application environment ("*Einsatzumgebung*") is not the subject of this framework agreement and is to be procured and used by the customer at his own responsibility;
- (b) "**Parties**" means NXP and the customer as parties to this business relationship;
- (c) "**Raw data**" means data such as machine parameters, material data and tool data, which are collected by means of the sensor technology used by the customer via the Edge Device;

- (d) "**sensXPERT Cloud**" refers to the software environment provided via internet as a central interaction tool with the Edge Device and the sensXPERT WebApp, in particular for visualisation of the acquired and stored raw data and for matching the raw data at different locations;
- (e) "**sensXPERT-system**" means the solution composed of the hardware module "Edge Device" and the sensXPERT software "sensXPERT WebApp" and "sensXPERT Cloud" that is used by the customer;
- (f) "**sensXPERT WebApp**" means the software pre-installed on the Edge Device for reading out the sensors used by the customer and for evaluating the raw data by means of an AI-supported algorithm;
- (g) "**Software**" means the software module of the sensXPERT hardware "sensXPERT WebApp" for measuring the sensor data as well as the sensXPERT cloud environment "sensXPERT Cloud" for evaluating the sensor data in their respective version.
- (h) "**Site**" means the location at the Customer's premises where the measuring instruments as a hardware component used by customer are present;
- (i) "**Confidential Information**" means any information, including but not limited to trade secrets, know-how, drawings, specifications, source and object codes of software, documentation, inventions, research results, experimental or development results, prices, business strategies, financial data, advertising methods, information about personnel, received by a party under this agreement or of which that party becomes aware, and such information about a party and its respective businesses and affairs which is marked "secret", "confidential" or "proprietary" or as to which confidentiality would be apparent to a reasonable businessman from its nature, subject matter or other circumstances;
- (j) "**Updates**" and "**Upgrades**" mean modifications of the software version within the further development of the software carried out by NXP at its own discretion. An Update is an update of the software within an existing software generation to eliminate any errors or to improve existing functionalities, whereby the version number does not increase (e.g. update from 1.2.x to 1.3.x). An Upgrade is an update of the software to a new software generation, whereby new functionalities are usually introduced. With an Upgrade, the version number increases (e.g. upgrade from 1.3.x to 2.0.0).

## § 3

### Subject matter of the contract

- (1) The subject matter of the contract is the provision of the sensXPERT-system to the customer for use in an approved operating environment for the term of the contract.

- (2) The sensXPERT-system is made up of the following components:
  - a) the "Edge Device" as a hardware module that is operated close to the tool and reads and evaluates the raw data (e.g. machine parameters, material data and tool data) of machines used in production by means of sensors used by the customer. The Edge Device is connected to the system control via analogue and digital interfaces or fieldbus connections such as OPC-UA, PROFINET and PROFIBUS and has sensors that can be integrated into the tool.
  - b) the "sensXPERT WebApp" software installed on the Edge Device for configuring the Edge Device, selecting the measurement mode, recording raw data and an AI-supported evaluation of the sensor data. The sensXPERT WebApp contains the initial operation settings, the material database and the AI environment for real-time process adaptation.
  - c) the sensXPERT cloud environment, "sensXPERT Cloud", which collects and stores the data collected by the sensXPERT WebApp and visualises it via an user interface. The sensXPERT Cloud enables the customer to centrally manage several Edge Devices, even across locations. In addition, the sensXPERT Cloud contains AI algorithms that continuously check and, if necessary, adapt existing decision-making bases.
- (3) The Edge Device and the sensXPERT web app preinstalled on it have data exchange interfaces for communicating with the customer's plants ("Kundenanlagen") and with other hardware and software systems. This provides the customer with a holistic view of the process and material data during processing and, in the event of process or material deviations, serves to intervene in the system control to increase processing efficiency.
- (4) Using the raw data collected via the sensXPERT-system, the customer can assess the performance of the machines due to an AI-supported evaluation of the raw data. The sensXPERT-system evaluates the raw data by means of a real-time algorithm and suggests possible changes or adjustments as optimization of the manufacturing process through characterization of the material and detection of material deviations. Any proposed changes or adjustments are recommendations for action. The customer is obliged to verify such changes or adjustments by expert and trained personnel before they are incorporated into the customer's processes.
- (5) The customer is obliged to ensure that the hardware and software available to him can interact and communicate with the sensXPERT-system. A claim for adaptation of the sensXPERT-system to the customer's specific operating environment is excluded but can be agreed separately in individual cases.

- (6) The software is a standard software designed for a wide range of measurement and evaluation options. Parameterisation or customising of the software is not owed.

### § 4

#### Provision of hardware and software

- (1) The Edge Device and the sensXPERT WebApp shall be provided after order confirmation by dispatch to the receiving address specified by the customer. The hardware covered by these terms is a plug & play solution which is connected to the machine control and the network on the customer's side self-reliantly.
- (2) The sensXPERT Cloud is provided by making the software available via the internet using the internet address communicated to the customer on the first day of the month following the first payment of the agreed remuneration. For this purpose, NXP shall set up access at to a server set up by NXP which is accessible to the customer via the Internet. A local installation of the sensXPERT Cloud on the customer's end devices is not required.
- (3) NXP ensures provision of the sensXPERT Cloud at the router exit of the data centre in which the sensXPERT Cloud is hosted (transfer point, "Übergabepunkt"). NXP does not owe the data connection between the transfer point and the customer's IT system. It is the customer's responsibility to create the technical conditions for receiving and using the software at the transfer point.
- (4) The availability of the sensXPERT Cloud is 99% on an annual average. Insofar as NXP carries out planned maintenance work, these periods are excluded from the calculation of the availability rate.
- (5) Adjustments, changes, and additions to the software as well as measures that serve to determine and remedy malfunctions will only lead to a temporary interruption or impairment of accessibility if this is absolutely necessary due to technical reasons. NXP shall inform the customer without undue delay of any temporary interruption or impairment and shall state the expected duration.
- (6) The customer will receive installation and setup instructions which contain the general procedure for connecting the Edge Device to a machine and to the network infrastructure. Subsequently, NXP will configure the sensXPERT WebApp installed on the Edge Device once by means of remote access (hereinafter referred to as "initial setup"). Setup, installation and configuration services that go beyond the initial setup are not subject of the business relationship but can be agreed separately between the parties.
- (7) Any separately required sensor technology and consumable parts such as connecting cables are not subject to this agreement and must be acquired separately. This also

applies to any special components created in individual cases and according to individual customer requirements.

- (8) Usage of the hardware and software of the sensXPERT-system is limited to the existence and duration of the contract.
- (9) The customer is not entitled to a handover of the software in source code.

### § 5

#### **Registration for sensXPERT Cloud**

- (1) In order to use the sensXPERT Cloud, the customer must register with NXP in order to obtain access to service functionalities such as data sheets and learning content as well as software updates. After registration, the customer is activated by NXP for use.
- (2) The sensXPERT Cloud includes a system for user administration by the customer. The administrator named by the customer can create new users via the user interface and assign them different authorisations with regard to accessing the sensXPERT Cloud.
- (3) The access credentials must be kept secret by the customer and the users authorised by him. Passing on the access credentials to unauthorised third parties is prohibited. If the customer becomes aware of any unauthorised use of the access granted to them, they are obliged to inform NXP of this immediately.

### § 6

#### **Obligations of the customer**

- (1) The customer is obligated to ensure that it is possible to use the sensXPERT-system in the customer's manufacturing and application environment, in particular that it is compatible with the existing machines, the hardware and software used and any interfaces. In this respect, NXP does not assume any warranty for the suitability of the sensXPERT-system for use in the specific manufacturing and application environment of the customer. Compatibility can be checked by means of the sensXPERT installation document.
- (2) The customer is obligated to grant NXP employees the remote access rights required for the initial setup in good time. In addition, NXP must be provided with information about the process, the production plant, the existing interfaces and other plant-specific details. The required data can also be found in the sensXPERT installation document.
- (3) The customer is obligated to integrate the sensXPERT-system into his existing environment, and to establish and maintain any technical requirements necessary for its

use. The customer is responsible for providing and maintaining the end devices required for the use of the software.

- (4) The customer may only connect its own devices and devices of third parties to the provided Edge Device to the extent necessary for proper and orderly use within the scope of the contractual purpose of use. In cases of doubt, approval must be obtained from NXP. Any damage to the provided Edge Device due to the connected devices shall be borne by the customer.
- (5) The customer is obligated to use the sensXPERT-system only by expert and trained personnel. The customer is aware that the evaluations provided by the sensXPERT-system and any proposed changes and adjustments to the manufacturing process are recommendations for action only and must be verified by the customer before they are transferred to the customer's processes.
- (6) The customer is obligated to prevent unauthorised access by third parties to the software and its contents by taking suitable precautions. Upon termination of employment and service relationships, access to the software shall be blocked for the employees concerned.
- (7) If the customer has ordered an annual recalibration of the sensXPERT-system as a separate service, he is obliged to send the additionally provided calibration plug to NXP in due time.
- (8) The customer is obligated to regularly check the end devices used to access the software for viruses or other harmful components and to use state-of-the-art virus protection programs for this purpose.
- (9) The customer is responsible for regular backups of the data managed via the software.
- (10) In the event of termination of the contract for any legal reason, the customer is obligated to back up the data managed via the sensXPERT Cloud in good time and in full. In the event of extraordinary termination, this must be done within 4 weeks of the declaration of termination.
- (11) The customer is obligated to name responsible persons who are authorised to make and receive legally relevant declarations with effect for and against the customer for the performance of the business relationship and who are available as contact persons for the performance of the contract.

### § 7

#### **Duties of NXP**

- (1) Without prejudice to the customer's obligations under § 6 and § 13 of this framework agreement, NXP shall maintain the components of the sensXPERT-system - provided

to the customer for the duration of this agreement - in a contractually compliant and serviceable condition (*“vertragsgemäßer und gebrauchsfähiger Zustand“*). The obligation to maintain does not include the adaptation of the components to changed conditions of use, technical and functional developments occurring after the conclusion of the agreement, adaptation to the functional scope of competing products or the creation of compatibility with new data formats.

- (2) NXP is not obligated to further develop the provided components of the sensXPERT-system, in particular the software component. If NXP publishes new Updates at its own discretion based upon the internal development cycle, the software will be provided to the customer in the respective current version or an Update will be provided for self-installation. The customer shall ensure that the Updates offered to him are installed; for this purpose, he must manually confirm the execution of the Update and thereby initiate the installation process.
- (3) The provision of Upgrades is not subject of this agreement but may be provided in individual cases by concluding a separate order to switch to a new software version.
- (4) NXP endeavours to design the software components in such a way that they are self-explanatory and can be used intuitively and without operating errors. Any documentation of the software beyond the installation instructions, in particular user documentation or an interface description, is not owed.

### § 8

#### Remuneration

- (1) The provision of the sensXPERT-system is subject to a fee. The respective remuneration owed and further conditions result from the offer and the related order confirmation. Unless agreed otherwise, the remuneration is due for the first time on the first day of the following month after the provision of the sensXPERT hardware.
- (2) If, in an individual case, the provision does not take place on the first day of a calendar month, the remuneration to be paid for the first month shall be calculated on a pro rata basis according to the remaining days of the month, beginning with the day following the provision.
- (3) Unless agreed otherwise, the remuneration shall be due in advance on the 3rd working day of each month. In accordance with the order confirmation, the payment of the remuneration may also be made as a one-off payment related to the term of the contract, in which case NXP shall grant the customer a discount as specified in the order confirmation.



- (4) All prices are exclusive of VAT.
- (5) The default interest shall amount to 9 percentage points above the base interest rate ("*Basiszinssatz*") applicable at the time.

### § 9

#### Term, termination

- (1) The contract shall be concluded upon acceptance of the offer and shall be concluded for an indefinite period of time, but for a minimum period of 24 months (hereinafter referred to as "minimum contract term"), unless otherwise agreed as evidenced by the order confirmation.
- (2) An ordinary termination of the contract can be declared by either party with a notice period of three (3) months to the respective end of the contract. If the contract is not to be continued after expiry of the minimum contract period, the notice of termination must be received within the aforementioned period. If a notice of termination is not given within the aforementioned period, the term of the contract shall be extended by one (1) year.
- (3) The right of the parties to extraordinary termination remains unaffected. NXP is entitled to terminate without notice in particular if (a) the customer is in arrears with due payments to the extent of the remuneration owed for at least two months and does not make payments despite reminders and the setting of a grace period or (b) if the customer violates the contractual provisions regarding the use of the sensXPERT-system. Any extraordinary termination requires that the other party is warned in writing and requested to eliminate the alleged reason for such extraordinary termination within a reasonable period of time.
- (4) Any notice of termination must be in writing. Transmission by fax or by means of a document with a qualified electronic signature ("*qualifizierte elektronischen Signatur*") shall be sufficient to comply with the written form requirement; Section 127 (2) and (3) of the German Civil Code shall not apply otherwise. In addition to the legal representatives of the parties, the responsible persons named by the customer as per preceding section 6 (11) of this agreement are also entitled to terminate the contract.
- (5) In the event of termination, the customer is entitled to continue to use the sensXPERT-system until the termination takes effect. After termination of the contract has taken effect, the customer is obliged to give up the usage of the sensXPERT-system and to return the provided hardware to NXP without delay. The customer is further obliged to return any backup copies of the software made to NXP without delay or to destroy them, at the customer's discretion, which must be proven to NXP upon first request.

- (6) If the customer defaults on the return of the sensXPERT-system after termination of the contract, NXP is entitled to demand either the agreed remuneration or a remuneration customary in the market for the duration of the withholding. This is not to be regarded as an implied continuation or extension of the terminated contract.

### § 10

#### Rights of use

- (1) NXP grants the customer the non-exclusive, non-transferable and non-sublicensable right, limited to the term of the contract, to use the contractual components of the sensXPERT-system. The customer is entitled to use the hardware and software as intended by the scope of this agreement for the duration of the contractual relationship.
- (2) The customer is not entitled to make changes to the components of the provided sensXPERT-system. In particular, the customer is not entitled to reverse-engineer the sensXPERT-system in whole or in part or to examine it in any other way for the purpose of reconstruction. The customer is not entitled to change, thwart, influence or otherwise circumvent protective measures of the software.
- (3) The customer's authorisation to use ("*Nutzungsberechtigung*") the respective Edge Device and the sensXPERT WebApp preinstalled on it is limited to only one manufacturing machine or production line within the named Site. Additional remuneration is due for the use of the software at several Sites. An extension of the authorisation to include further machines and/or Sites is possible by separate agreement.
- (4) If and to the extent that the customer intends to move the respective Edge Devices in whole or in part to another Site and to use them there, he shall notify NXP of this with sufficient advance notice and inform NXP of the respective location so that the inventory and the place of use of the respective components can always be traced by NXP.
- (5) The customer is not entitled to remove ownership details, copyright notices, trademarks and other markings on the components of the sensXPERT-system or to change them.
- (6) The customer is only entitled to transfer the usage ("*Gebrauchsüberlassung*") of the components of the sensXPERT-system to third parties with the express written consent of NXP. Third parties in this sense are also affiliated companies within the meaning of § 15 AktG (German Stock Corporation Act, "*Aktiengesetz*"). A handover or other transfer of use of the hardware and software to third parties, against payment or free of charge, is prohibited, in particular the provision of a possibility of use, leasing, public rendition ("*öffentliche Wiedergabe*") or making the software publicly accessible ("*öffentliche Zugänglichmachung*").

- (7) NXP is entitled to request information from the customer as to whether the use of the hardware and software of the sensXPERT-system is taking place within the scope of the granted authorisation, in particular regarding the scope of use, the number of devices used and the Sites at which the hardware and software are used. NXP shall be entitled, upon an announcement within a reasonable timeframe and while safeguarding the legitimate interests of the customer, to conduct an audit the usage of the sensXPERT-system herself or by means of a third party commissioned by NXP, whereby the customer shall support NXP to the best of its ability.
- (8) If the customer violates any of the above provisions, NXP shall be entitled to extraordinarily terminate the agreement for cause. Upon the termination taking effect, the customer shall immediately cease using the hardware and surrender it to NXP.

### § 11

#### Defects of the sensXPERT-system

- (1) Strict liability (“*verschuldensunabhängige Haftung*”) for defects which were already present at the time of the conclusion of the contract (hereinafter referred to as “initial defects”) is excluded. Without prejudice to the following provisions, NXP shall be liable for initial defects only to the extent that NXP is at fault. The provisions of the § 19 shall remain unaffected.
- (2) NXP shall remedy any defects occurring after provision of the sensXPERT-system, for example if the hardware or software delivers faulty results or does not function properly in any other way, where usage of the sensXPERT-system is impossible or significantly restricted. In the event of an Update or Upgrade of the software, the claims for defects are limited to the respective current version.
- (3) Claims for defects by the customer do not exist in the case of an insignificant deviation from the agreed or assumed quality (“*vereinbarte oder vorausgesetzte Beschaffenheit*“) or in the case of an only insignificant impairment of the fitness for use of the sensXPERT-system.
- (4) Furthermore, claims for defects do not exist if the sensXPERT-system is unsuitable for use in the customer's manufacturing and application environment, contrary to the test to be carried out by the customer.
- (5) Claims for defects shall furthermore not exist in the event of excessive or improper use, natural wear and tear, non-reproducible faults or faults that cannot otherwise be proven by the customer.
- (6) Insofar as a defect exists, the customer shall not be entitled to reduce the remuneration owed. In this case, the client may pay the remuneration owed subject to a reservation and is entitled to reclaim the remuneration overpaid for the period of the existence of

a defect according to the provisions on unjust enrichment (“*bereicherungsrechtlichen Bestimmungen*“).

## § 12

### Support, maintenance and training

- (1) NXP provides services to the customer for the support and maintenance of the provided components of the sensXPERT-system based on the following conditions.
- (2) Insofar as ordered separately in individual cases and shown in the order confirmation, NXP shall provide further services related the provided sensXPERT-system subject to a separate fee, such as
  - a) instruction of persons named by the customer in the basic functionality of the sensXPERT-system in order to enable ordinary use;
  - b) training of persons named by the customer, which goes beyond an instruction and enables the customer to carry out advanced configurations (e.g. installation and integration of the hardware component into the operating environment, connection of third-party devices after approval by NXP) independently;
  - c) advising the customer, in particular with regard to the hardware component and its use in the customer's environment, related to the usual use for the customer's purposes, as well as in the case of changes and extensions to the operating environment;
  - d) annual calibration of the calibration plug by NXP, after prior submission of the calibration plug by the customer.
- (3) NXP is entitled to a separate remuneration for the expenses incurred for maintenance and support, provided that
  - a) NXP acts as a result of a report without there being a defect, unless the customer could not with reasonable effort have discovered that there was no defect, or
  - b) a reported defect is not reproducible or cannot otherwise be proven by the customer to be a defect, or
  - c) additional expenses are incurred due to the customer's failure to properly fulfil its obligations, in particular the duties of cooperation per Section 6 and 13 of this agreement.

## § 13

### **Duties to cooperate; cooperation**

- (1) The customer is obligated to support NXP to the extent necessary and to create all conditions necessary in its own sphere of operation for the proper performance of NXP's services. To the extent necessary for this purpose, the customer shall obligate its own employees and third parties engaged by it to cooperate with NXP and, in particular, to ensure that they are informed about the assignment of NXP.
- (2) The customer is obligated to establish and maintain remote access to the software for NXP in order to perform support and maintenance services. Insofar as on-premise services are to be provided, the customer shall be obligated to provide NXP with the authority to access and inspect the premises to the extent necessary.
- (3) The customer is obligated to report any defects and malfunctions of the sensXPRT-system immediately after their discovery in a comprehensible and detailed form, stating all information useful for the detection and analysis of the defect and describing the malfunction in such detail that it is possible to analyse and reproduce the defect. In particular, the work procedures which led to the occurrence of the defect, the manifestation and the effects of the defect shall be specified.
- (4) To the extent necessary, the customer shall provide NXP immediately with any such data and protocols and other information which is suitable for analysing the fault.
- (5) NXP is entitled to enquire the status of the operated sensXPRT-system and to collect and evaluate required generated data regarding error messages, run times, downtimes and model development.

## § 14

### **Incident management**

- (1) During normal business hours, NXP will receive reports about defects from the persons designated by the customer, assign them to the defect categories determined below and, on the basis of this assignment, shall carry out any activities within NXP's dutiful assessment which are necessary for the analysis and correction of the reported defect.
- (2) The incident management does not include any services due to an usage of the sensXPRT-system in non-approved environments or services which become necessary due to improper use, in particular by connecting non-approved devices to the hardware component of the sensXPRT-system. If NXP acts in such respect, these services shall be remunerated separately.

- (3) The incident management does not include any services relating to the specific manufacturing and operational environment of the customer or the technical infrastructure used by the customer or the customer's other hardware and software.
- (4) NXP will assign received fault reports to one of the following categories after initial review:
  - a) Critical defect (priority 1): A malfunction that causes a failure of the hardware and / or software components of the sensXPERT-system so that usage is completely or almost completely impossible. The operating procedure of the customer is impaired to such an extent that a rapid remedy is unavoidable.
  - b) Significant defect (priority 2): A malfunction that impairs the usage of the hardware and/or software components of the sensXPERT-system in such a way that proper use is not possible or only possible with disproportionate effort. The simultaneous occurrence of several significant defect can constitute a critical defect.
  - c) Other defect (priority 3): Other malfunctions that do not or only insignificantly impair the use of the hardware and/or software components of the sensXPERT-system. The simultaneous occurrence of several such faults can constitute a significant defect.
- (5) If several defects occur at the same time, NXP may determine the order of the defect to be remedied on its own judgement and responsibility. The customer is entitled to coordinate with NXP on priorities for a remedy.
- (6) If, after the initial analysis, the reported defect does not turn out to be a defect in the hardware and/or software component of the sensXPERT-system, NXP shall notify the customer thereof without undue delay.

### § 15

#### **Reaction and rectification periods**

- (1) NXP will respond to the customer's notification of a defect during normal business hours within the following periods (reaction period):
  - a) in the case of priority 1 defects, within 12 hours of receipt of the notification;
  - b) in the case of priority 2 defects, within 24 hours of receipt of the notification;
  - c) in the case of priority 3 defects, within 48 hours of receipt of the notification.
- (2) In the event that a reported defect is of priority 1 or 2, NXP will immediately initiate the necessary measures on the basis of the circumstances reported by the customer in order to determine the cause of the defect.

- (3) NXP will endeavour to rectify defect in accordance with the identified defect categories during normal business hours within the following periods (rectification period):
  - a) in the case of priority 1 defects, within 2 business days after receipt of the notification;
  - b) in the case of priority 2 defects, within 3 business days after receipt of the notification;
  - c) in the case of priority 3 defects, within 5 business days after receipt of the notification.
- (4) In individual cases, NXP will arrange for appropriate measures to be taken for further analysis and rectification of the reported defect and inform the customer of the estimated rectification period.
- (5) In the event that it becomes foreseeable that a defect of priority 1 or priority 2 cannot be rectified within the aforementioned rectification periods after receipt of the notification, NXP will, to the extent possible, provide the customer with measures to circumvent or rectify the defect, such as instructions for action and/or correction, as a workaround or replace the affected hardware in its entirety, excluding consumables such as connection cables or sensor technology.
- (6) In the event of a defect of the software components, the defect may also be rectified by providing a new software version or a workaround. If the defect does not impair the functionality of the software or if the impairment is insignificant, NXP shall be entitled to rectify the defect by providing a new software version within the scope of its Update, Upgrade and version planning.

### § 16

#### **Business and service hours**

- (1) NXP shall provide services exclusively within its general business hours, whereby the aforementioned reaction and rectification periods shall only run during general business hours. NXP's business hours are Monday to Friday from 8.00 a.m. to 6.00 p.m. CET/CEST, except on nationwide public holidays and state-wide public holidays in Bavaria (service hours).
- (2) If and to the extent that this is agreed upon as a separate additional service, the customer may, in urgent cases, request that support services shall be provided outside the service hours, including at night and at weekends (extended service hours).

## § 17

### Subcontractor

- (1) NXP shall be entitled to engage third parties for the purpose of performance of the contract (e.g. as subcontractors and/or sub-suppliers).
- (2) Each party shall be liable for subcontractors engaged by it as for its own fault.

## § 18

### Use of data

- (1) NXP is entitled to pass on the shipping information as provided by the customer in his order to the sister company NETZSCH-Gerätebau GmbH, Wittelsbacherstr. 42, 95100 Selb, Germany, which will take over the shipping and handling of the hardware component on behalf of NXP.
- (2) NXP is entitled to use statistical measurement data from the sensors and machine data collected through the use of the sensXPERT-system for the analysis and further development of the components of the sensXPERT-system. While doing so, NXP will respect the customer's business and trade secrets and will only use this data internally to optimise the functioning of the components of the sensXPERT-system.

## § 19

### Liability, limitation

- (1) Claims for damages are excluded irrespective of the legal grounds, unless NXP or its legal representatives or vicarious agents (*“Erfüllungsgehilfen”*) have acted with intent or gross negligence. NXP shall only be liable for slight negligence if one of the material contractual obligations (cardinal obligations, *“Kardinalpflichten”*) has been breached by NXP or its legal representatives or vicarious agents. Material contractual obligations are such obligations where the fulfilment is necessary for the proper performance of the contract and the observance of which the customer may regularly rely upon. In this case, NXP shall only be liable for foreseeable damage, the occurrence of which must typically be expected.
- (2) NXP shall not be liable for the loss of data to the extent that the damage is due to the customer's failure to perform its own data backups and thereby ensure that lost data can be restored with reasonable effort.
- (3) If NXP's liability is excluded or limited, this shall also apply to the personal liability of NXP's statutory representatives, employees and vicarious agents.
- (4) The limitation period (*“Verjährungsfrist”*) for claims for damages is one (1) year.



- (5) The above limitations of liability shall not affect liability in the event of injury to life, limb or health, in the event of a defect occurring after the assumption of an express guarantee, in the event of fraudulently concealed defects or in accordance with the Product Liability Act.

### **§ 20**

#### **Offset, right of retention**

- (1) The customer may only offset NXP's claims, in particular claims for remuneration under this agreement, against claims that are undisputed, have been finally adjudicated or have been accepted by NXP.
- (2) Rights of retention over the remuneration owed can only be asserted insofar as they are based on the unjustified non-fulfilment of NXP's obligations as established by this agreement.

### **§ 21**

#### **Confidentiality**

- (1) The parties undertake to keep confidential information of the respective other party secret and to use such information only for the purposes of this contract and within the scope of exercising their rights under this contract. Confidential information may only be made accessible to employees of the parties insofar as this is necessary to achieve the purposes of the contract and the employees are correspondingly obligated to maintain confidentiality.
- (2) The only exceptions to this obligation are confidential information which the receiving party can prove was known or generally accessible to it at the time of transfer or became generally accessible to it at a later date, was made accessible to it by a third party without breaching a confidentiality obligation or was developed by it independently of the disclosed information.
- (3) The obligations under the preceding paragraphs shall survive the term of the contract.

### **§ 22**

#### **Final provisions**

- (1) NXP reserves the right to adjust or supplement this framework agreement, considering the legitimate interests of the customer, for example if individual functionalities of the sensXPERT-system change or if adjustments or supplements (hereinafter referred to collectively as "Adjustments") become necessary as a result of changes in the law or

due to changes in case law. NXP will notify the customer of the adjusted framework agreement in good time by notification in text form (e-mail is sufficient). The Adjustments shall be deemed to be approved if the customer (a) does not object in text form (e-mail sufficient) within one month after notification of the Adjustments or (b) continues the usage of the sensXPERT-system after the expiry of the aforementioned period. When the adjusted framework agreement comes into force, it shall apply to the ongoing business relationship in the updated form; in the event of an objection, the previous terms of use shall continue to apply unchanged. NXP will separately point out the legal consequences of the objection made and not made in the notification of Adjustment.

- (2) Notwithstanding the foregoing paragraph 1, other amendments and supplements to these provisions as well as any ancillary agreements thereto must be made in text form (e-mail is sufficient) in order to be effective. The text form shall also be observed for an amendment of this clause or for a waiver of the form by the parties. Verbal agreements outside these provisions shall only be valid if they are confirmed in text form.
- (3) The invalidity or impracticability of one or more provisions of this agreement shall not affect the validity of the remaining provisions of this agreement. The same applies in the event that the agreement contains a regulatory gap. The invalid or impractical provision or the regulatory gap shall be replaced by a legally permissible and practicable provision which, in the understanding of the parties, comes as close as possible to the economic purpose of the invalid, impractical or missing provision.
- (4) This agreement is intended to bind not only the Parties but also their legal successors, assignees, licensees and affiliated companies within the meaning of section 15 of the German Stock Corporation Act ("*Aktiengesetz*", AktG). The contracting parties therefore undertake to impose their obligations under this agreement also on their legal successors, assignees, licensees and affiliated companies within the meaning of § 15 AktG for the duration of their legal successor, assignee or licensee position or their affiliation within the meaning of § 15 AktG.
- (5) This agreement and its interpretation shall be governed by German law to the exclusion of the CISG (United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980).
- (6) This framework agreement is drafted in both the German and English languages where the English text is a convenience translation for information purposes. In the event of any discrepancy between the German and English language versions, the German language version shall prevail. Where a German term has been inserted in quotation marks and/or italics it alone (and not the English term to which it relates) shall be authoritative for the purpose of the interpretation of the relevant English term in this framework agreement.

- (7) The place of jurisdiction for all disputes arising from and in connection with this agreement, including its effectiveness, is Hof, insofar as the customer is an entrepreneur (“*Kaufmann*”), a legal entity under public law or a special fund under public law. The same applies if the customer does not have a general place of jurisdiction in Germany or if the customer's place of business or habitual residence is not known at the time a lawsuit is filed.