



# Impossible Sensing Terms and Conditions

Effective Date: 01-01-2022

These terms and conditions (the “*Terms and Conditions*”) shall apply to each agreement (the “*Agreement*”) that Impossible Sensing, LLC (“*IMS*”) that, by such Agreement’s terms, incorporate these Terms and Conditions by reference. The counterparty to any of those Agreements may be referred to herein as the “*Client*.” The Client and IMS may be referred to herein individually as a “*Party*” and collectively as the “*Parties*.” To the extent the Terms and Conditions conflict with the Agreement between the Parties, the terms of the Terms and Conditions shall control. Any capitalized terms not otherwise defined herein shall have the meaning set forth in the applicable Agreement.

1.1. **Independent Contractor.** Nothing contained in the Agreement, the SOWs, the Confidentiality Agreement and these Terms and Conditions (collectively, the “*Service Terms*”) shall be deemed to create an agency, joint venture, partnership or franchise relationship between the Parties. Each Party acknowledges that the other Party is an independent contractor, that it is not authorized to act on behalf of the Party except as otherwise explicitly authorized in the Service Terms, and that none of its employees or subcontractors is an employee of the other Party or is entitled to any employment rights or benefits of the other Party. Each Party further acknowledges and agrees that each Party, on behalf of itself and its employees and subcontractors, waives any and all rights it has, or may have, against the other Party under the Employee Retirement Income Security Act of 1974. Each Party shall be solely responsible for any and all tax obligations of such Party arising from or relating to the Service Terms, including but not limited to, all city, state and federal income taxes, social security withholding tax and other self-employment tax incurred. IMS. Each Party acknowledges that the other Party may provide services to other customers, specifically included, but not limited to, those customers engaged in business that are similar to the business of the Party. Nothing contained in the Service Terms prevents either Party from performing services for other customers.

1.2. **Force Majeure.** The performance of either Party under the Service Terms may be suspended to the extent and for the period of time that such Party is prevented or delayed from fulfilling its obligations due to causes beyond its reasonable control (including, without limitation, acts of God, acts of civil or military authority including governmental priorities, strikes or other labor disturbances, fires, floods, epidemics, pandemics, wars, terrorism, or riots), provided that the nonperforming Party uses commercially reasonable efforts to avoid or remove such causes of nonperformance and continues performance hereunder with reasonable dispatch as soon as such causes are removed. After thirty (30) consecutive days of suspension on the part of one Party, the other Party may, at its sole discretion, terminate the Agreement and/or any applicable SOWs without further liability.

1.3. **Notices.** All notices, consents, requests, demands and other communications hereunder are to be in writing and are deemed to have been duly given or made: (i) when delivered in person, (ii) three (3) days after deposited in the United States mail, first class postage prepaid, (iii) in the case of overnight courier services, one business day after delivery to the overnight courier service with payment provided for, or (iv) in the case of facsimile or electronic transmission (such as e-mail), when sent, verification received; to the Parties at the following addresses:

If to IMS:

Impossible Sensing, LLC  
Attn: Pablo Sobron  
3407 S Jefferson Ave  
Saint Louis, MO 63118  
psobron@impossiblesensing.com

With copy to:

Stock Legal, LLC  
Attn: Sara K. Stock  
4512 West Pine Boulevard  
St. Louis, Missouri 63108  
sara.stock@stocklegal.com

If to Client, to the address as stated in the Agreement (or such other address as the Client provides to IMS in accordance with this Section.)

1.4. **Legal Fees.** Except as otherwise provided in the Service Terms, all legal and other costs and expenses incurred in connection with the Service Terms and the transactions contemplated thereby are to be paid by the Party incurring such costs and expenses. In the event a Party brings suit to construe or enforce the terms hereof, or raises the Service Terms as a defense in a suit brought by IMS, the prevailing Party is entitled to recover its attorneys' fees and expenses.

1.5. **Entire Agreement.** The Service Terms contain the entire understanding of the Parties pertaining to the Services and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to such subject matter.

1.6. **Amendment; Waiver.** No amendment, modification, supplement or termination of any provision of the Service Terms, nor consent to any departure therefrom, will in any event be effective unless the same is in writing and duly executed by the Parties. Any waiver of any provision of the Service Terms and any consent to any departure from the terms of any provision of the Service Terms is to be effective only in the specific instance and for the specific purpose for which given.

1.7. **Remedies.** Unless otherwise expressly limited in the Service Terms, in the event of breach by one Party, the other Party will be entitled to exercise any and all rights and remedies available to it at law or in equity whether concurrently or separately, and the exercise of one remedy will not be deemed an election of such remedy or preclude the right to exercise any other remedy. Without limiting the generality of the foregoing, either Party may offset any fees it owes to the other Party against amounts it is otherwise owed.

1.8. **No Assignment.** Neither the Agreement nor any right, interest or obligation hereunder may be assigned (by operation of law or otherwise) by any Party without the prior written consent of the other Party and any attempt to do so will be void; provided, however, that IMS may, upon notice to Client but without being obligated to obtain Client's consent, assign the Agreement or any of its rights, interests or obligations hereunder to an affiliate of IMS or to a third party which is purchasing all or substantially all of the assets of IMS or at least fifty percent (50%) of the equity of IMS.

1.9. **Successors and Assigns.** All provisions of the Service Terms are binding upon, inure to the benefit of and are enforceable by or against the Parties and their respective heirs, executors, administrators or other legal representatives and permitted successors and assigns.

1.10. **Governing Law.** The Service Terms and the rights and obligations of the Parties hereunder are to be governed by and construed and interpreted in accordance with the laws of the State of Missouri applicable to contracts made and to be performed wholly within Missouri, without regard to choice or conflict of laws rules.

1.11. **Submission to Jurisdiction.** SUBJECT TO SECTION 1.12, ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THE SERVICE TERMS OR ANY DOCUMENT RELATED HERETO MAY BE BROUGHT IN THE COURTS OF THE COUNTY OF ST. LOUIS, STATE OF MISSOURI OR ANY COURT OF THE UNITED STATES OF AMERICA FOR THE EASTERN DISTRICT OF MISSOURI AND, BY EXECUTION AND DELIVERY OF THE SERVICE TERMS, EACH PARTY ACCEPTS FOR ITSELF, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF SUCH COURTS. THE PARTIES IRREVOCABLY WAIVE ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH ANY OF THEM MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. THE PARTIES IRREVOCABLY CONSENT TO THE SERVICE OF PROCESS OF ANY OF SUCH COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE CLIENT AND THE IMS, SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH MAILING.

1.12. **Alternative Dispute Resolution.**

a) Mediation. If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

b) Arbitration. If the Parties fail to resolve a dispute in accordance with Section 1.12(a), any claim arising out of or related to the Service Terms, or a breach hereof, is to be settled by arbitration in accordance with the procedures set forth in this Section 1.12(b). The Parties agree that, in the event of a dispute arising out of the Service Terms, the affected Parties will submit such dispute to binding arbitration as provided in the Service Terms. All arbitrations will be conducted in St. Louis County, Missouri, or at another location mutually approved by such Parties, pursuant to the Commercial Arbitration Rules of the American Arbitration Association except as provided in the Service Terms. All arbitrations will be undertaken pursuant to the Federal Arbitration Act, where applicable, and the decision of the arbitrator is enforceable in any court of competent jurisdiction. The Parties agree to waive their respective rights to further appeal or redress in any other court or tribunal except solely for the purpose of obtaining execution of the decision resulting from the arbitration proceeding.

1.13. **Non-Solicitation of Employees.** During the term of the Agreement and for twelve (12) months after the expiration or termination of the Agreement, for any reason whatsoever, Client agrees that neither it nor any of its affiliates or subsidiaries will, directly or indirectly, solicit, induce, influence, recruit, engage, hire, interfere with, accept services from or attempt to solicit, induce, influence, recruit, engage, hire, interfere with or otherwise accept services from any person employed by, contracted with or engaged by IMS or any of its affiliates or who has worked for, contracted with or was engaged by IMS or any of its affiliates at any time during the term of the Agreement or during the twelve (12) months following the termination or expiration of the Agreement for any reason whatsoever. The obligations of this provision shall survive the termination or expiration of the Agreement for any reason whatsoever.

1.14. **Choice of Language.** It is by the express intention of the Parties that the Service Terms and all its related documents be drafted in English.

1.15. **Severability.** Any provision of the Service Terms which is prohibited, unenforceable or not authorized in any jurisdiction is, as to such jurisdiction, ineffective to the extent of any such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof, or affecting the validity, enforceability or legality of such provision in any other jurisdiction, unless the ineffectiveness of such provision would result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable.

1.16. **Survival.** Rights and obligations under the Service Terms which by their nature should survive, including, but not limited to any warranties, indemnities, limitation of liabilities and all payment obligations, will remain in effect after termination or expiration hereof.

1.17. **Interpretation.** The Parties hereto agree that the Service Terms are the product of negotiation between sophisticated parties and individuals, all of whom were represented by, or had an opportunity to be represented by legal counsel, and each of whom had an opportunity to participate in, the drafting of each provision hereof. Accordingly, ambiguities in the Service Terms, if any, shall not be construed strictly or in favor of or against any Party hereto but rather shall be given a fair and reasonable construction.

1.18. **Counterparts.** The Agreement and/or SOWs may be executed by the Parties on any number of separate counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Counterpart signature pages to the Agreement and/or SOWs transmitted by facsimile transmission, by electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original signature.

1.19. **Export and US Regulations.** Supply of Deliverables is subject to the Export Administration Regulations of the U.S. Department of Commerce, the International Traffic in Arms Regulations of the U.S. Department of State, and other laws, regulations, rules and orders of the U.S. Government and its agencies controlling exports and re-exports (hereinafter collectively referred to as “*applicable United States export control laws and regulations*”). Acceptance of an order and the supply of Deliverables are made subject to all applicable United States export control laws and regulations. IMS shall be excused from performance, and shall not be liable or accountable to Client or any other party, to the extent that an act or omission of the U.S. Government or any law or regulation restricts, prohibits, or delays the supply of Deliverables. Client agrees that it will not, directly or indirectly, export or re-export, any goods, Deliverables or technical information received from IMS to any destination if such export or re-export would violate the laws of the United States of America. Client agrees to indemnify and hold IMS harmless against any liability arising from the breach of Client’s obligation under this Section.

**THE FOLLOWING SHALL APPLY SOLELY AND EXCLUSIVELY TO SALES AGREEMENTS:**

2.1 **Acceptance.** All SOWs and any Deliverables in connection therewith (“*Orders*”) are subject to IMS’s acceptance in its sole and absolute discretion. The acceptance of one or more Orders from a Client shall not create any express or implied obligation on the part of IMS to accept any future Order or Orders from that Client and shall not otherwise be deemed to create an ongoing supply obligation on the part of IMS. The refusal of any Order or Orders shall not entitle the Client to any payment, damages, or other compensation of any kind from IMS.

2.2 **Quotations.** No quotations, estimates, ROMs or delivery dates furnished by any IMS employee, agent or other representative, whether verbally or written, shall be binding, unless agreed upon mutually by both Parties in writing, executed by duly authorized representatives of both Parties.

2.3 **Shipping/Transportation.** The Shipping and Transportation of any Deliverables or other items to be delivered by IMS to Client in connection with the Service Terms are subject to the following terms and conditions:

a. Shipping Terms are FOB Origin, Freight Collect. All transportation, arrangements, charges, bank charges, taxes, and insurance are the responsibility of the Client.

b. Client may have Deliverables picked up at the designated IMS facility during normal business hours, subject to prior IMS approval and with not less than forty-eight (48) hours-notice.

c. If there is a delay with Client picking up the goods, storage fees may be applied at IMS's sole discretion. If the (i) material cannot be moved within thirty (30) days of the material readiness date, or (ii) Client has not authorized "ship-in-place" invoicing; storage charge fees will be assessed to the Client, at a rate of one percent (1%) of the value of the goods per day.

**2.4 Contractors And Approvals.** IMS shall retain the right to outsource part of the scope of work to a third party. IMS shall have no liability in respect of any act, omission or negligence of any sub-consultant, contractor, workman, supplier or fabricator or other third party involved in the project.

**2.5 Payment Terms And Title Transfer.** An invoice will be generated and forwarded when notification of material readiness is supplied. The full amount of the invoices shall be due thirty days (Net 30) from the date the invoice is issued and shall become past due thirty-one (31) days after the date of the invoice. Past due invoices will bear a delinquency charge which shall be one and one-half percent (1.5%) per month (which is an annual percentage rate of eighteen percent (18%)), or at the highest rate permitted by law, whichever is less. Title passes from IMS to Client once full payment is received.

**2.6 Inspection.** Client shall inspect all goods within twenty (20) days of receipt and will notify IMS in writing within ten (10) days thereafter of any defects in the material or manufacture of the goods. Client shall not bring any claim relating to any defects which were or which could or should have been discovered during such inspection and about which Client did not notify IMS within the prescribed time.

**2.7 Suspension.** Where the Client instructs services to be suspended or delayed, the Client shall compensate IMS for the costs of suspended personnel and expenses incurred during such period, subject to a maximum of ten (10) business days.

**2.8 Price.** Prices are subject to change upon notice sent to Client at any time before the sales confirmation has been accepted. Prices for Deliverables may be adjusted by IMS, upon notice to Client at any time prior to shipment, to reflect any increase in the cost of raw materials (e.g., steel, aluminum) incurred by IMS after issuance of the applicable sales confirmation. All stated prices are exclusive of any taxes, fees, duties, and levies, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under the Service Terms (collectively, "**Taxes**"). Any Taxes related to the Deliverables purchased are the responsibility of Client (excluding taxes based on IMS's net income), unless Client presents an exemption certificate acceptable to IMS and the applicable taxing authorities. If possible, IMS will bill Taxes as a separate item on the invoice presented to Client. If any exemption certificate presented by Client is held to be invalid, then Client will pay IMS the amount of the Tax and any penalties and interest related thereto. All prices in any quotes, estimates, proposals or other representations of work to be performed are acknowledged and agreed to be represented in US Dollars (\$USD).

**2.9 Travel.** Client will reimburse IMS for reasonable travel and other expenses incurred while performing the obligations required pursuant to the Service Terms. IMS will exercise discretion and good judgment when incurring travel-related expenses.