

FT TECHNOLOGIES LIMITED

TERMS AND CONDITIONS

Please read these Terms and Conditions together with its Schedules carefully as they will govern the contract formed between You and Us for the supply of Sensor maintenance services in relation to the repair and replacement of Sensors You have in Your possession.

IT IS HEREBY AGREED

1 Defined Terms:

Additional Software: means FT Acu-Vis software application that tests and updates the functionality of the Sensors.

Agreement: the contract (which shall be governed by these Terms and Conditions) that is formed between You and Us for the supply of Sensor maintenance services.

Business Hours: 8.30am am to 5.30pm pm GMT Monday to Friday other than a Saturday, Sunday or a public holiday in England.

Commencement Date: means the date on which an Agreement is formed between You and Us as set out in Clause 3.

Confidential Information: means information (however recorded or preserved) including but not limited to the terms of this Agreement, the Sensors and any related information, prices or business information which is either marked as 'confidential' or else which should reasonably be considered by the receiving party as confidential because of its nature and the manner of its disclosure.

Corrected Sensor: means Returned Sensor/s that have been restored back to Good Working Order.

Sensor: means the FT7 series of ultrasonic air flow sensors manufactured by Us.

Fixable Fault: means a fault which can be fixed as described in Clause 5.2. Good Working Order means the Sensor operates and is functional in accordance with the User Manual.

Inspection Fee: means the fee We may charge You for inspecting the Returned Sensor to establish the existence of a fault.

Licence Terms: means the terms and conditions governing use of the Additional Software as set out Schedule 1.

Non-Fixable Fault means a fault which cannot be fixed as described in Clause 5.5 RMA means a Return Materials Authorisation that You will require to send the Sensor that you believe to be faulty back to Us.

Repair Fees: means the fees chargeable by Us for provision of the Repair Services.

Repair Services: means the services We shall undertake to restore the Returned Sensor back to Good Working Order.

Replacement: means a Sensor which is issued to replace a faulty Sensor under this Agreement.

Returned Sensor: means a Sensor returned to Us as described in Clause 4.

Term: means the period from the Commencement Date to the date on which we receive payment in full from You of any fees or other charges due to Us under the Agreement, or on completion of all services provided under such Agreement whichever the later.

Terms and Conditions: means these terms and conditions.

User Manual: means all operating manuals, specifications and other documentation or information relating to use and storage that We have made available in relation to the Sensors.

Warranty: means a contractual right that entitles the holder to make a claim against FT for repair or replacement of the Sensors that are not in Good Working Order.

2 General

2.1 FT Technologies Limited, of Sunbury House, Brooklands Close, Sunbury-on-Thames TW16 7DX (registered company number 01603909) ("We" or "Us" "Ours") shall supply all its Sensor maintenance services to its customers ("You" or "Your") in accordance with these Terms and Conditions.

2.2 These Terms and Conditions will govern the supply of Sensor maintenance services to You and shall supersede all previous representations, negotiations, arrangements or agreements relating to such services.

3 Basis of Contract

3.1 We shall send you a copy of these Terms and Conditions when You contact Us as described in Clause 4.1.

3.2 An Agreement will come into existence between You and Us when You confirm in writing that You agree to these Terms and Conditions, or if earlier, when:

3.2.1 You use the Additional Software as described in Clause 4.3; OR

3.2.2 You return any Sensors to Us for inspection.

3.3 The written acceptance by You of these Terms and Conditions may be issued by a message sent to Us by email to ft.orders@ftechnologies.com.

4 Reporting a Fault

4.1 It will be Your responsibility to notify Us of any Sensor that You believe to be malfunctioning, has failed, or is otherwise not in Good Working Order. You may do this by calling us on +44 (0) 208943 0801 or emailing us at ft.orders@ftechnologies.com.

4.2 We will:

4.2.1 ask You for the serial number/s of the Sensor you believe to be faulty;

4.2.2 establish whether or not (i) You have any rights to enforce the Warranty relating to the Sensors; and (ii) confirm whether or not the Sensor you are reporting is still within Warranty;

4.2.3 discuss the problems You are encountering with the Sensor; and

4.2.3.1 advise You to return the Sensor to Us; or

4.2.3.2 recommend that you evaluate or update the Sensor Yourself by using the Additional Software.

4.3 If You are advised by Us under Clause 4.2.3 to update or evaluate the functionality of the Sensor Yourself, We will supply you with a copy of the Additional Software. You hereby acknowledge and agree that You will use the Additional Software only in accordance with Our Licence Terms.

4.4 On use of the Additional Software, should You identify a fault that cannot be rectified by You, You should contact Us as set out in Clause 4.1 and We shall advise You of the options available to You.

4.5 If You are advised by Us under Clause 4.2.3.1 to send the Sensor back to Us for inspection, and You agree to do so, we will:

4.5.1 If applicable inform You of Our Inspection Fee; and

4.5.2 Issue You with an RMA.

4.6 You shall: (i) cover the costs of returning Sensors to Us; (ii) include the completed RMA form in the package and (iii) pack the Sensors in accordance with the packaging guidelines in Schedule 2.

4.7 If the sensor is not received at FT within 12 weeks of the date of issue of the RMA then the RMA will be cancelled. A new application to return the sensor may be made but the warranty status will be calculated from the date of this new application.

4.8 We shall not be liable for damage or repair costs arising from the use of return packaging that does not comply with the guidelines in Schedule 2.

5 Repair of Returned Sensor within Warranty

5.1 Following further inspection of a Returned Sensor that is still covered by the Warranty, the following provisions of this Clause 5 shall apply:

5.2 Fixable Fault Diagnosed:

If we identify a malfunction in the Returned Sensor that can be repaired by Us, We shall notify You of the fault and, at Our option either:

5.2.1.1 send You a Replacement; OR

5.2.1.2 undertake the Repair Services following which We will return the Corrected Sensor to You.

5.3 Any delivery costs in relation to Replacements or Corrected Sensors that we return to You under Clause 5.2 will be at Our own cost. We may also, at Our discretion, reimburse You of any direct expenses that You have reasonably incurred in sending the faulty Sensors to Us.

5.4 Unless otherwise agreed between You and Us, We shall retain the Returned Sensor that we have decided to replace under 5.2.1.1.

5.5 Non-Fixable Fault Diagnosed:

If the Returned Sensor is beyond reasonable costs of repair, We shall:

5.5.1 retain these Sensors; and

5.5.2 at Our own costs of return send You a Replacement that is equivalent in performance and functionality to the Returned Sensor that we have classified as being beyond reasonable repair.

6 Repair of Sensors outside Warranty

6.1 For any Returned Sensor that is **outside** the Warranty Clauses 6.1 to 6.5 shall apply:

Fixable Fault Diagnosed:

6.2 If we identify a Fixable Fault, We will notify You of the fault and provide You with a quote of Our Repair Fees.

6.3 Should You:

6.3.1 Accept the quote of our Repair Fees, and instruct Us to proceed on the basis that You are agreeable to these Terms and Conditions we shall undertake the Repair Services, and return the Corrected Sensor to You at our own cost.

6.3.2 Reject the quote of Our Repair Services, we shall send the Returned Sensor to You and invoice You for the Inspection Fee [and Our reasonable costs of return].

6.3.3 Not give us any instructions within 16 weeks of the date of the Quote then We will return the Sensor to You Un-Corrected and we will invoice You for costs incurred.

Non-Fixable Fault Diagnosed:

6.4 Should we establish a Non-Fixable Fault we shall notify You accordingly, and give You the option to purchase a Replacement subject to our terms and conditions of sale as applicable from time to time.

6.5 Unless otherwise agreed between You and Us, We shall retain the Returned Sensor that We have classified as being beyond economic repair. We reserve the right to invoice You for the Inspection Fee.

7 No Fault Diagnosed

7.1 In relation to any of the Repair Services described above, if on inspection we do not identify a fault, or find that the Returned Sensor is in Good Working Order, we shall (i) send the Returned Sensor back to You with full particulars of why we have determined that the Returned Sensor is not faulty; and (ii) invoice You for the Inspection Fee [and for Our reasonable costs of sending the Returned Sensors back to You].

8 Title and Risk

8.1 Unless agreed otherwise between You and Us:

8.1.1 We shall retain any Returned Sensors as provided for under Clause 5.4 and/or 6.5; and

8.1.2 all rights of ownership in, and title to, such Returned Sensors shall pass back to Us on despatch to You of the Replacements, or in relation to Clause 6.5 on our decision to retain the Returned Sensor.

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- 8.2 Any Returned Sensor that we opt to keep under these Terms and Conditions shall be either disposed by Us in accordance with applicable laws and regulations or retained by Us for further investigation and analysis.
- 8.3 We shall be responsible for any Returned Sensors in our possession, and the risk in these Returned Sensors will pass to Us when they are received by Us.
- 8.4 Risk in the Sensors delivered or returned to You under these Terms and Conditions, will pass to You:
- 8.4.1 on the date on which they are delivered to Your premises if We have agreed to pay the reasonable costs of return; or
- 8.4.2 on the date on which the Sensors are despatched by Us to You if the costs of return are to be paid by You.
- 9 Excluded Maintenance**
- 9.1 To the extent that any faults identified in the Sensors you return to Us arise from the following circumstances, the results will be that any Repair Services or Replacements will be at Your own cost, and the Warranty will not apply:
- 9.1.1 the Returned Sensor has being used or installed in a manner that is inconsistent with the requirements set out in the User Manual;
- 9.1.2 accidental damage, wear and tear, or any damage caused by Your misuse or neglect of the Returned Sensor;
- 9.1.3 any repair, maintenance, alteration, modification or adjustment of the Returned Sensor that was performed by persons other than Us, or by persons not expressly nominated or approved in writing by Us;
- 9.1.4 a failure, interruption or surge in the electrical power or the related infrastructure connected to the Returned Sensor;
- 9.1.5 lightning strikes;
- 9.1.6 any fault in any attachments or associated equipment whether or not supplied by Us which does not form part of the Returned Sensor; and/or
- 9.1.7 deterioration of the Returned Sensor due to inadequate storage facilities put in place by You.
- 10 Fees**
- 10.1 All fees shall be payable either (i) in accordance with the terms of any account You hold with Us; or (ii) if you do not have an account with Us or if payment terms are not otherwise agreed, within 30 days of receipt of a valid invoice from Us.
- 10.2 Unless agreed otherwise all payments made by You shall be in pounds sterling.
- 10.3 If You fail to make any payment due to Us by the due date for payment, then without limiting any remedies available to Us:
- 10.3.1 You shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount; and
- 10.3.2 We reserve the right to suspend provision of the Repair Services until the debt is paid in full.
- 10.4 All fees are exclusive of VAT or any other applicable sales tax, which shall be paid by You at the rate and in the manner for the time being prescribed by law.
- 10.5 Payment of all taxes (including all customs and export taxes and duties) shall be made by You when returning any Sensors to Us; or when We return any Sensors to You.
- 11 Warranty Periods**
- 11.1 Sensors which are replaced or corrected, that are within a warranty period, will benefit from the remainder of the pre-existing Warranty period.
- 11.2 Any Replacements for Sensors that are out of Warranty will be governed by any warranties agreed at the time of purchase.
- 12 FT Warranties**
- 12.1 Except as expressly stated in these Terms and Conditions all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including satisfactory quality, fitness for purpose and suitability) in relation to the Repair Services and Sensors are hereby excluded to the fullest extent permitted by law.
- 13 Liability**
- 13.1 Neither party excludes or limits liability to the other party for:
- 13.1.1 fraud or fraudulent misrepresentation;
- 13.1.2 death or personal injury caused by negligence; or
- 13.1.3 any other liability that cannot be excluded by applicable law.
- 13.2 Subject to Clause 13.1, We shall not be liable whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- 13.2.1 any loss (whether direct or indirect) of profits, business, revenue, or goodwill;
- 13.2.2 loss or corruption (whether direct or indirect) of data or information; or
- 13.2.3 any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement.
- 13.3 Subject always to Clause 13.1 Our aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall in relation to any 12 month period commencing on the Commencement Date (each a "Period") be limited to the greater of:
- 13.3.1 £5000; or
- 13.3.2 the total fees paid by You to Us under these Terms and Conditions during any such Period.
- 14 Intellectual Property**
- 14.1 All intellectual property rights in the (i) Returned Sensors; (ii) Replacements; and (iii) Corrected Sensors shall at all times remain the sole and exclusive property of FT or its licensors as appropriate.
- 15 Term and Termination**
- 15.1 The Agreement shall commence on the Commencement Date and unless terminated earlier in accordance with this Clause 15 continue for the Term.
- 15.2 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 15.2.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified to make that payment;
- 15.2.2 the other party commits a material breach of any term of this Agreement (other than failure to pay any amounts due under this agreement) and (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
- 15.2.3 if the other party has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent or bankrupt or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction) or is subject to any analogous event or proceeding to those set out in this clause 15.2.3 in any applicable jurisdiction.
- 15.3 Any provision in these Terms and Conditions that expressly or by implication is intended to come into or continue in force on or after termination of the Agreement shall remain in full force and effect.
- 15.4 Termination of the Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.
- 15.5 On termination of this Agreement for any reason, You shall
- 15.5.1 delete the Additional Software from Your IT network or any storage mediums; and
- 15.5.2 immediately pay any outstanding amounts owed to Us pursuant to this Agreement.
- 16 Confidential Information**
- 16.1 Each party undertakes that it shall not at any time during the Agreement, and thereafter after termination of the Agreement, disclose to any person any Confidential Information of the other party except as permitted by Clause 16.3.
- 16.2 Each party may disclose the other party's Confidential Information:
- 16.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this Clause 16; and/or
- 16.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 17 Data Protection**
- 17.1 FT shall comply with its obligations under Data Protection Law (being as applicable the Data Protection Act 2018, the General Data Protection Regulation ((EU) 2016/679), (and any UK law which implements or acts as a domestic equivalent of it in whole or in part), and any applicable laws, regulations or secondary legislation relating to privacy or data protection, as amended or updated from time to time), and You shall:
- 17.1.1 ensure that its provision of any "personal data" (as defined by Data Protection Law) to FT (and FT's use of such data as anticipated by or necessary in relation to the Contract and the Services) is compliant with Data Protection Law;
- 17.1.2 not (by its acts or omissions) cause FT to be in breach of Data Protection Law;
- 17.1.3 only use personal data provided or made available by FT as necessary in relation to the Contract (and in any event only in compliance with Data Protection Law) and promptly delete or return such personal data at FT's request;

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17.1.4 co-operate fully with FT and provide (as part of the Services and at no extra cost) such information, access and assistance as FT requires in order to achieve and evidence compliance with each party's obligations under Data Protection Law in relation to the Contract;

17.1.5 keep FT indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered incurred by FT as a result of or in connection with a breach by You of this clause 17

17.1.6 if it acts as a "processor" (as defined by Data Protection Law) on behalf of FT, immediately inform FT and co-operate in good faith with FT to execute such data processing clauses as FT requires in order to ensure compliance with its obligations under Data Protection Law; and

if any transfer of personal data to You by FT would constitute a transfer outside of the UK or European Economic Area (or otherwise to a "third country") for the purposes of Data Protection Law, immediately inform FT and co-operate in good faith with FT and provide all requested assistance and information to ensure that such transfer is compliant with Data Protection Law (including but not limited to entering into standard contractual clauses approved by a competent supervisory or regulatory authority.

18 Force majeure

18.1 We shall not be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of Our obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond Our reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

19 Assignment

19.1 You shall not assign or in any way transfer Your obligations under the Agreement without Our prior written consent.

19.2 Subject to Clause 19.3 We reserve the right to assign, transfer or subcontract all Our rights and obligations under the Agreement.

19.3 We shall assign or transfer Our rights and obligations under this Agreement only in the event of a corporate reorganisation or asset transfer.

20 Waiver

20.1 No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21 Notice

21.1 Any notice or other communication given to a party under the Agreement shall be in writing and shall be:

21.1.1 by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

21.1.2 sent by email to an email address specified by a party as may be changed from time to time by the relevant party.

21.1.3 Any notice shall be deemed to have been received:

21.1.3.1 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am (Your local time) on the second business day after posting or at the time recorded by the delivery service; or

21.1.3.2 if sent by email at 9.00 am (Your local time) on the next business day after transmission.

22 Severance

22.1 If any provision or part-provision of these Terms and Conditions or the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms and Conditions and the Agreement.

22.2 If any provision or part-provision of these Terms and Conditions and the Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

23 No partnership or agency

23.1 Nothing in these Terms and Conditions or the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

24 Third-party rights

24.1 No person other than a party to the Agreement shall have any rights to enforce any term of this agreement.

25 Rights and remedies

25.1 The rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

26 Governing law

26.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

27 Jurisdiction

27.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

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SCHEDULE 1

Additional Software Licence Terms

1. We hereby grant You a non-exclusive, non-transferable licence to use throughout the Term the Additional Software only for the purposes of connecting the Sensors that you believe to be faulty to Your computer systems in order to check the functionality of the Sensors, amend the settings of the Sensors or update the operating software of the Sensors (the "Permitted Purpose").
2. You shall not use the Additional Software for any purpose other than the Permitted Purpose without our prior written consent, and the You acknowledge that additional fees may be payable on any change of use approved by Us.
3. You may make backup copies of the Additional Software as may be necessary for its lawful use. You shall record the number and location of all copies of the Additional Software and take all necessary steps to prevent unauthorised copying.
4. Except as expressly stated in these Licence Terms, You shall have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Additional Software in whole or in part except to the extent permitted by law.
5. You shall not make available the Additional Software to any third party, or use it on their behalf whether directly or indirectly and whether by yourselves or through a third party.
6. You shall indemnify and hold Us harmless against all loss, damage or expense that We may suffer or incur as a result of Your breach of these Licence Terms.
7. You shall not in any way transfer, sub-licence or assign your rights or obligations under these Licence Terms.
8. We reserve the right to terminate the licence granted under these Licence Terms (i) with immediate effect if You breach any of its terms; or (ii) for convenience on giving You 7 days prior written notice.
9. We warrant that the Additional Software will be free of material defects at the date on which We deliver the Additional Software to You. We give no further warranties in relation to the Additional Software which is only provided on an 'as is' basis. Except as expressly stated in these Licence Terms, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including satisfactory quality, fitness for purpose and suitability) are excluded to the fullest extent permitted by law.
10. All intellectual property rights in and to the Additional Software shall at all times remain Our property or that of Our licensors.
11. On termination or expiry of this Agreement or these Licence Terms all rights granted to You under these Licence Terms shall end and You shall cease all use of the Additional Software.
12. These Licence Terms shall be governed in accordance with English law.

FT Packaging Guidelines

- Care should be taken to protect the measurement cavity and the transducers from accidental damage.
- The carry pouch should be kept clean and not be used to transport other tools.
- Paperwork should not be placed directly next to the sensor but should be transported separately or in the top of the box. **Do not** attach anything to the cavity bars.



Do not tie anything to the Cavity

Do not put anything in to the Cavity



1. The sticky label will damage or even remove some of the super-hydrophobic paint.
2. The zip-tie will scratch paint from the cavity of the sensor.
3. The card label will rub away paint from the edge of the cavity.

FT Sensor Shipping Requirements:

For service returns and general shipping, it is recommended that FT Sensors are shipped using reasonable packaging precautions. Below are some general best practice guidelines to reduce the likelihood of shipping damage:

- Use the original FT cardboard box, if this is not available, use a suitable double-layered cardboard box.
- Protect each Sensor with 2 layers of bubble-wrap and secure this with tape.
- Use additional padding to ensure the Sensors cannot move freely within the box.
- Service and RMA documents should be placed on top of the Sensors (or with the shipping documents attached to the outside of the package).
- The carry pouch will not provide enough protection for postage or courier transportation.
- Do not attach anything around or inside the Sensor cavity.
- No paperwork should be attached to the Sensor or inserted inside a carry pouch.

Failure to comply with these handling guidelines may result in Sensor damage and will invalidate the Warranty.

Bad example:



SCHEDULE 2

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Good example:



Packaging options available

If required FT's packaging is available to order in the following sizes:

Packaging Type		Units	Dimensions
Small Box		1-2 Sensors	25 x 17 x 9 cm
Half Size Box	3-6 Sensors	48 x 29 x 9 cm	
Large Box		7-12 Sensors	48 x 29 x 17 cm
Carry Pouch (FT010)	1 Sensor each	20 x 7 cm	

For more information please contact our team:

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