



## Kraken Robotic Systems Inc. General Terms and Conditions of Sale

### Document Version History

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**Disclaimer**

Kraken should be consulted regarding the proper integration, calibration and configuration of all parts of any Kraken designed system. This document is intended as supplementary information. Any changes to the integration, calibration or configuration must be discussed with Kraken.

Failure to operate this product in a safe and responsible manner could result in injury or damage to the product or other property. This document and companion documents contain instructions for safety and operation of the product. It is essential to read all documentation pertaining to the product and follow all instructions and warnings in said documentation, prior to setup or use, in order to operate the product correctly and avoid damage or injury. Kraken has made every effort to provide clear and accurate information in the documentation, which is provided solely for the user's knowledge. While thought to be accurate, the information in this document is provided strictly "as is" and Kraken will not be held responsible for issues arising from typographical errors or user's interpretation of the language used in this documentation that is different from that intended by Kraken. Kraken reserves the right to revise this document and make changes from time to time without obligation to notify any person of such revisions or changes. In no event shall Kraken, its employees or authorized agents be liable for any damages or losses, direct or indirect, arising from the use of any technical or operational information contained in this document.

**Documentation Feedback**

To offer suggestions or to report any incorrect or missing information, please contact the documentation department at: [documentation@krakenrobotics.com](mailto:documentation@krakenrobotics.com).

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To learn more about Kraken Robotic Systems Inc., please visit [www.krakenrobotics.com](http://www.krakenrobotics.com).



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## **General Terms and Conditions of Sale**

The following terms and conditions of sale shall apply to any sale of goods and/or services by Kraken Robotic Systems Inc. (hereinafter called "KRSI") or affiliated company. The Purchaser shall be deemed to have full knowledge of the terms and conditions herein. Such terms and conditions shall be binding if either the goods and/or services referred to herein are delivered to and accepted by the Purchaser, or if the Purchaser does not deliver to KRSI written objection to these terms and conditions or any part thereof within five days from the date hereof.

### **1. General**

In the event of any conflict or inconsistency between these terms and conditions of sales and the terms and conditions contained in the Purchaser's order or in any other form issued by the Purchaser, whether or not any such form has been acknowledged or accepted by KRSI, these terms and conditions shall prevail. No waiver, alteration, or modification of these terms and conditions shall be binding upon KRSI unless made in writing and signed by a duly authorized representative of KRSI.

### **2. Quotations and Order Acceptance**

Any quotation prepared by KRSI either directly or by an authorized sales representative of KRSI shall expire within thirty (30) days, and after such time period the quote is no longer valid. The Purchaser may accept the quotation by delivering a purchase order that incorporates the quotation by reference. The contract effective date shall be the date of acceptance communicated by KRSI to the Purchaser in writing. Confirmation of the purchase order by the Purchaser constitutes the Purchaser's unconditional acceptance of the purchase order including these terms and conditions.

### **3. Price/Payment Terms**

All prices are in US currency, unless otherwise stated. Unless otherwise stated in the quotation, quoted prices are subject to change by KRSI with or without notice until Purchaser's acceptance. Prices are subject to correction for error. Unless expressly stated in KRSI's invoice or the quotation, the purchase price for the goods or service excludes all governmental or brokerage taxes, duties, and fees.

All payment terms are subject to KRSI's credit approval at the time of acknowledgment of order acceptance. Invoices are payable within thirty (30) days of the invoice date. Payments that are outstanding more than ten (10) days from their respective due date shall bear interest at 1% per month (12% annually) until fully paid.

All payments shall be via wire transfer in accordance with the banking information provided by KRSI. Unless otherwise noted in the quotation, the terms of payment shall be as follows:

- 30% upon signing of contract (non-refundable);
- 20% upon critical design review (CDR); and
- 50% upon FAT (factory acceptance testing).

### **4. Freight Costs/Shipment/Damages or Shortages in Transport**

Unless otherwise stated, all prices are Ex Works (EXW) KRSI's facility/warehouse (Incoterms 2010). The Purchaser is responsible for all delivery charges such as freight, duties, and taxes where appropriate. Partial deliveries are permitted. Except for obligations stated under "Warranty" herein, KRSI's responsibility for goods ceases upon making the goods available, suitably packaged, for the carrier. In the event of loss or damage during shipment, the Purchaser's claim will be against the carrier only. Claims for shortages must be made in writing within ten (10) days after the receipt of goods by the Purchaser or it will be concluded that goods were delivered in their entirety.



#### **5. Delivery and Title**

KRSI will make a reasonable effort to meet the proposed delivery schedule, but shall not be liable for loss or damage resulting from delay and non-delivery or default in shipment, in whole or in part, delivery or other failure of performance due to events beyond the control of KRSI and without the fault or negligence of KRSI, including, without limitation, contingencies of transportation, procurement of materials and parts, labour difficulties, governmental action, or acts of God. Title to the goods purchased or any part thereof shall not pass from KRSI to the Purchaser until all payments due hereunder have been duly made in accordance with these terms and conditions. KRSI warrants the title to all goods supplied under the Contract to be free and clear from all liens, claims, encumbrances and any other charges whatsoever, and KRSI shall indemnify and hold harmless the Purchaser from any and all loss, liability, claims, damages, expenses including reasonable legal costs relating to such liens, claims, encumbrances or other charges.

#### **6. Default**

If the Purchaser fails to perform its obligations with respect to payments as noted in section 3 above or if the Purchaser fails to promptly give reasonable assurances of their future performance when requested by KRSI, then KRSI may, upon ten (10) day's written notice to the Purchaser, declare the Purchaser to be in default. KRSI may then suspend performance of its obligations hereunder without liability and retain all rights and remedies KRSI may possess at law, in equity and/or as provided in these terms and conditions. The Purchaser shall indemnify KRSI in full against all loss, costs, damages, charges, and expenses incurred by KRSI as a result of such default.

#### **7. Cancellation/Changes**

If the Purchaser cancels the contract for any reason, the Purchaser will make payment of reasonable and necessary costs resulting from the purchase order which shall include the greater of 1) 30% of the contract price or 2) all incurred costs (material, labour, overhead, and engineering) on the completed work plus a 20% markup.

Changes to the design, specification, and delivery schedule or any material term of the contract, may only be made by the Purchaser and KRSI in writing ("change order"). This change order will state the parties' agreement on 1) Changes in specs, designs, scope of work, or delivery instructions; 2) Adjustment to the purchase price; 3) Adjustment to the shipping date and/or the period of performance. If the Purchaser has communicated proposed changes to KRSI, then KRSI may at its sole discretion: 1) Accept the change order, 2) Reject the change order and continue performance under the existing contract, or 3) cancel the contract.

#### **8. Returned Goods/Repairs**

Prior to returning any product to KRSI for warranty repair, the Purchaser must first contact KRSI and obtain a return material authorization (RMA) number. RMAs are only valid for 30 days from the date it was issued. The Purchaser will clearly label each product returned with the appropriate RMA number. All goods returned requiring warranty repair must include a letter stating the problem and probable cause and the date and time of failure. All freight, handling, and custom duties (if any) are the responsibility of the Purchaser. Expedited shipments will be handled on a per case basis and expedite fees will apply.

All our warranty returns are subject to an assessment fee of \$800 USD. KRSI will provide the Purchaser with an official quote for repair after assessment has completed indicating:

- Root cause of failure
- Labor hours for repair
- Replacement part(s) for repair



If the Purchaser approves the repair work, the assessment fee will be waived. Should the Purchaser not approve the repair work, the assessment fee will be invoiced and the parts will either be scrapped or returned to the customer at their expense

#### **9. Force Majeure**

The Parties shall not be liable hereunder for failure or delay of performance of obligations under the Contract (other than payment of moneys) (a) due to causes arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of such Party, including, but not limited to, acts of God, strike, lockout, labour disputes, shortage of transportation, embargo, prohibition of import or export of the goods, governmental orders or restrictions, shortage of materials or labour, utility or communication failure, war, fire, explosion, sabotage, storm, flood, earthquake, or epidemics, (b) that it could not reasonably have been expected to have taken the occurrence of the impediment into account at the time of the conclusion of the Contract, and (c) it could not reasonably have avoided or overcome the effects of such impediment, shall not be regarded as a default under in performance of the Contract. The Party affected by the force majeure shall promptly notify the other party immediately and in detail of the commencement and nature of such circumstances and nature of such circumstance and the probable consequences of it. The party whose performance is delayed must use reasonable efforts to perform its obligations in a timely manner, must employ all resources reasonably required in the circumstances and must obtain suppliers and services from other sources if reasonably available and if satisfactory to the other party. If any of these causes, prevents or delays performance for more than 60 consecutive days, the Party not affected by the force majeure hereunder may terminate the Contract, effective immediately on written notice to the other Party.

#### **10. Limited Warranty**

KRSI warrants for a period of one (1) year from the date of receipt or acceptance, that the goods sold by KRSI pursuant to the Contract shall be free from defects in design, performance, materials and workmanship under normal use and service when correctly installed, used and maintained, and not infringe or contribute to the infringement of any intellectual property right and conform with these terms and conditions for the warranty period. This warranty is limited to repair or replacement of the said product at KRSI's option, ex-works, the KRSI facility/warehouse in Newfoundland, providing the product was not abused, modified or operated other than in accordance with the KRSI instruction manuals. If the Purchaser determines that there is a defect in the goods at any time during the warranty period, KRSI will repair or replace the defective goods. Any and all repaired goods shall be covered by this warranty for a period equal to the original warranty period. KRSI reserves the right to modify its warranty at any time, in its sole discretion. THIS LIMITED WARRANTY IS NOT TRANSFERABLE.

#### **Warranty Limitations/Exclusions**

- Any separate product purchased from, but not manufactured by Kraken is sold with only such warranties as are made by the manufacturer thereof. Kraken only warrants that it has title thereto, free of all liens or encumbrances.
- This warranty does not apply to systems or components that are damaged or fail as a result of normal wear, such as, but not limited to, tethers, actuators, control fins and other systems or components subject to wear.



- This warranty does not apply to systems or components that are damaged or fail as a result of failure of the user to read and observe instructions for proper operation and maintenance as contained in the user manuals furnished with the equipment
- This warranty does not apply to systems or components that are damaged or fail by connection to improper or improperly wired sources of power, or by inadequate packing, accident in transit or elsewhere, fire, theft, or other similar calamities.

Kraken will not be responsible for any asserted defect which has resulted from Acts of God, normal wear, misuse, abuse, improper configuration, repair, or alteration made, or specifically authorized by, anyone other than an authorized representative of Kraken. The giving of, or failure to give, any advice or recommendation by Kraken shall not constitute any warranty by, or impose any liability on Kraken.

#### **11. Limitation of Liability**

**KRSI MAKES NO OTHER WARRANTY REGARDING ITS GOODS OR THE GOODS OF OTHERS EITHER EXPRESSED OR IMPLIED, AND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHICH EXCEEDS THE FORGOING WARRANTIES IS HEREBY DISCLAIMED BY KRSI AND EXCLUDED FROM ANY AGREEMENT MADE BY ACCEPTANCE OF ANY ORDER. KRSI DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING ANY LIABILITY FOR GOODS NOT BEING AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF USE OF THE GOODS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE OR REPLACEMENT PRODUCT, FACILITIES OR SERVICES, THE CLAIMS OF THIRD PARTIES, INJURY TO PROPERTY, OR ANY OTHER DIRECT, INDIRECT SPECIAL RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM AND WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT BASED ON BREACH OF WARRANTY, CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, EVEN IF KRSI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN. THIS LIMITATION OF LIABILITY APPLIES BOTH TO GOODS AND SERVICES AND SUPPORT PROVIDED TO PURCHASER UNDER THIS AGREEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY KRSI, ITS AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE LIMITED WARRANTY PROVIDED IN SECTION 10 ABOVE. ANY AND ALL LIABILITY OF KRSI IS EXPRESSLY LIMITED AND THE REMEDY IN ANY DISPUTE UNDER THIS AGREEMENT SHALL BE TO SEEK RECOVERY OF THE AMOUNTS PURCHASER PAID, PURSUANT TO SECTION 10 ABOVE, UPON THE PAYMENT OF WHICH KRSI, ITS AGENTS AND EMPLOYEES, AND AFFILIATES, WILL BE RELEASED FROM AND DISCHARGED OF ALL FURTHER OBLIGATIONS AND LIABILITY TO PURCHASER. THE LIMITED WARRANTY OF KRSI GIVES PURCHASER SPECIFIC LEGAL RIGHTS, AND PURCHASER MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE OR COUNTRY TO COUNTRY.**

#### **12. Indemnity**

Each of the Purchaser and KRSI shall indemnify the other party, its affiliates, and each of their respective directors, officers, representatives, agents and employees, from and against any and all liability, losses, claims, costs charges and expenses (including legal fees on a solicitor and his own client basis) brought by a third party, on account or personal injury, loss of life or damage to the third party's tangible property, to the extent caused by the negligence of the indemnifying party in connection with the Contract. In the event the injury or damage is caused by joint or



concurrent negligence of Purchaser and KRSI, the loss or expense shall be borne by each party in proportion to its degree of negligence. For purposes of KRSI's indemnity obligation, no part of the goods or site is considered third party property.

### **13. Patent Indemnity**

No rights in intellectual property, including but not limited to, license or other rights under any patents, copyrights, trade secrets, or trademarks owned or controlled by KRSI or under which KRSI is licensed, are granted to the Purchaser or implied by the sale of goods or services hereunder. The Purchaser shall not use the trademarks of KRSI to identify such goods provided, however, that the Purchaser may identify such goods as utilizing, containing, or having been manufactured from genuine goods of KRSI as treated, modified, or altered by the Purchaser or a representative of the Purchaser. If goods or services sold hereunder are manufactured according to the specifications of the Purchaser, the Purchaser shall indemnify KRSI against any liability for patent, copyright, or trademark infringement on account of such manufacture or performance.

Each party shall retain ownership of all confidential information and intellectual property it had prior to the contract. All new intellectual property conceived or created by KRSI in the performance of the contract, whether alone or with any contribution from the Purchaser, shall be owned exclusively by KRSI. The Purchaser agrees to deliver assignment documentation as necessary to achieve that result.

### **14. Governing Law and Dispute Resolution**

These terms and conditions shall be governed by the laws of the Province of Newfoundland and Labrador and the laws of Canada, applicable herein. With respect to international transactions, the UN Convention on Contracts for the International Sale of Goods is hereby excluded from application to the contract.

All disputes arising in connection with the Contract shall be resolved in accordance with this Article 14. If a dispute is not resolved by negotiations, either party may give written notice. If the dispute is not then resolved by consultations or mutually agreed mediation within thirty (30) business days after giving notice, then either party, upon written notice to the other party may commence arbitration. If the Purchaser's pertinent place of business is North America, then the applicable jurisdiction is Ontario, Canada. If the Purchaser's pertinent place of business is outside North America, then the dispute shall be submitted to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce ("ICC"). The legal place of arbitration shall be Toronto, Ontario. There shall be one mutually acceptable arbitrator. If the parties cannot agree on a mutually acceptable arbitrator, then each party shall select one arbitrator within thirty (30) business days after giving or receiving the demand for arbitration. The arbitrators so selected shall select a third arbitrator. The procedural rules of the arbitration will be determined by the arbitrators. The arbitration proceedings shall be conducted in English. The decision of the arbitrators shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authority to appeal for revisions of the decision.

### **15. Severability**

If any term of the Contract is determined to be unenforceable or invalid, that unenforceability or invalidity shall not affect the remaining portions of the Contract and such unenforceable or invalid article, section or portion hereof shall be deemed to be severed from the remainder of the Contract and these terms and conditions.

### **16. Assignments**

The rights and duties of the Purchaser hereunder shall not be assignable by the Purchaser without the prior written consent of KRSI, and any purported assignment or assumption without such consent shall be null and void.





## **17. Confidentiality**

KRSI and the Purchaser may each provide the other party with confidential information in connection with the Contract. Confidential information means information that is designated in writing as “confidential” or “proprietary” by the disclosing party at the time of written disclosure. In addition, prices for goods and services shall be considered KRSI’s confidential information.

The receiving party agrees: (i) to use the confidential information only in connection with the contract and use of goods and services, (ii) to take reasonable measures to prevent disclosure of confidential information to third parties, and (iii) not to disclose the confidential information to a competitor of disclosing party. Notwithstanding these restrictions, (a) KRSI may disclose confidential information to its affiliates and subcontractors in connection with performance of the contract, (b) a receiving party may disclose confidential information to its auditors, (c) the Purchaser may disclose confidential information to lenders as necessary for the Purchaser to secure or retain financing needed to perform its obligations under the contract, (d) a receiving party may disclose confidential information to any other third party with the prior written permission of the disclosing party, and in each case, only so long as the receiving party obtains a non-disclosure commitment from any such subcontractors, auditors, lenders or other permitted third party that prohibits disclosure of the confidential information and provided further that the receiving party remains responsible for any unauthorized use or disclosure of the confidential information. The Receiving party shall upon request return to the disclosing party or destroy all copies of confidential information except to the extent that a specific provision of the contract entitles receiving party to retain an item of confidential information.

The obligations under this article 17 shall not apply to any portion of the confidential information that: (i) is in the public domain (ii) after disclosure to a party becomes part of the public domain otherwise than as a result of the wrongful act of that party (iii) is received from a third party provided that it was not acquired directly or indirectly by that third party from a party to this agreement; or (iv) is required to be disclosed by law or any government or governmental body, authority or agency having authority over a party.

Each disclosing party warrants that it has the right to disclose the information that it discloses. Neither the Purchaser nor KRSI shall make any public announcement about the contract without prior written approval of the other party. Such written approval shall not be unreasonably held. KRSI may list the Purchaser as a customer in its brochures and on its website without prior approval. As to any individual item of confidential information, the restrictions under this article 17 shall expire five (5) years after the date of disclosure. Article 17 does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

The Purchaser consents and agrees to KRSI’s collection, use and maintenance of the Purchaser’s personal information as defined in applicable privacy legislation for the purpose of facilitating the acquisition and payment of the goods and services, to evaluate the Purchaser’s qualifications and to monitor performance.

## **18. Termination**

The Contract may be terminated, immediately by either party (i) if the other party becomes insolvent, is dissolved or liquidated, makes a general assignment for the benefit of its creditors, files or has filed against it a petition in bankruptcy, or has a receiver appointed for a substantial part of its assets or (ii) upon personal dishonesty, wilful misconduct, wilful violation or any law, rule or regulation of the other party. If either party materially breaches any provision of the Contract and such breach continues for more than thirty (30) days after the breaching party has



received written notice of the breach from the non-breaching party, the non-breaching party shall have the right to terminate the Contract on five (5) days prior written notice to the other party.

**19. Notice**

All notices, requests, claims, demands, and other communications between the parties shall be in writing. All notices shall be given i) by delivery in person ii) by first class, registered, or certified mail iii) by facsimile or electronic mail to the address of the party specified in the Contract or such other address as either party may specify in writing. All notices shall be effective upon i) receipt by the party to which notice is given or (ii) the fifth day following mailing, whichever occurs first.

**The following addresses shall be used for notice as above:**

**Fax:** +1 709 757 5757

**Email:** [info@krakenrobotics.com](mailto:info@krakenrobotics.com)

**Courier:**

Attention: President & CEO  
Kraken Robotic Systems Inc.  
189 Glencoe Drive  
Mount Pearl, NL  
A1N 4P6

**20. Headings**

The headings used herein are for reference purposes only and shall not affect the meaning or interpretation of any term, condition, or provision herein.

**21. General**

This Contract may be executed and delivered, including by facsimile transmission, in counterparts, each of which shall be an original, but all of which shall be deemed to be one and the same instrument, and shall be binding when so signed.