

Terms & Conditions for Sale

I. DEFINITIONS

In this document the following words have the following meanings:

- **"Agreement"** means the agreement between the End-User and Kinova to which these Terms and Conditions apply;
- **"Development"** means the Intellectual Property Rights that the End-User may gain, create, conceive, suggest, develop or reduce to practice as a result of the use of the Products, the Improvements, or Kinova's Confidential Information;
- **"End-User"** means the organisation or person who buys Products for its own use and not for resale;
- **"Field of Use"** means the field of use as described in the Product Application Form signed by the End-User;
- **"Intellectual Property Rights"** means any and all proprietary rights provided under (i) patent law, (ii) copyright law, (iii) trade-mark law, (iv) design patent or industrial design law, (v) semi-conductor chip or mask work law, or (vi) any other statutory provision or common law principle applicable to this Agreement, including laws protecting trade secrets and confidential business information, which may provide a right in either ideas, works, formulae, algorithms, concepts, inventions or know-how generally, or the expression or use of such ideas, formulae, algorithms, concepts, inventions or know-how; and any and all applications, registrations, licenses, sublicenses, franchises, agreements, or any other evidence of a right in any of the foregoing granted in any country of the world;
- **"Kinova"** means Kinova inc., 6110 rue Doris-Lussier, Boisbriand, QC, Canada J7H OE8;
- **"Products"** means the articles to be supplied to the End-User by Kinova under the Agreement;
- **"Restricted Field of Use"** means any and all medical applications of the Products;
- **"Software"** means the software (whether embedded in the hardware as firmware or otherwise and including third party software), documentation, interfaces, content, fonts and any data that came with the Product, as may be updated or replaced by feature enhancements, software updates or system restore software provided by Kinova, whether in read only memory, on any other media or in any other form; and
- **"Territory"** means the world

II. GENERAL

These Terms and Conditions supersede all other terms and conditions referred to, offered or relied on by the End-User whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the End-User, unless the End-User specifically states in writing, separately from such terms, that it wishes such terms to apply and such terms have been acknowledged and agreed thereto by Kinova in writing.

The Agreement along with these Terms and Conditions may only be amended, supplemented or otherwise modified in writing signed by Kinova and the End-User.

III. CREDIT TERMS

Credit is offered to approved credit applicants only. Credit approval is to the complete discretion of Kinova. If credit is not approved, the sale of the Product is subject to a "Cash on Delivery" (COD) or prepayment first order shipment.

IV. QUOTATIONS

Quotations are valid for 120 days from date of issuance, after which they are null and without effect. Typographical and clerical errors in quotations are subject to correction to the complete discretion of Kinova. Quotations may be subject to change at the discretion of Kinova to reflect changes in customs duty rulings, tax status, exchange rate fluctuations, and other external factors not otherwise mentioned herein.

V. ORDERS

All Product orders are subject to acceptance by Kinova. Typographical and clerical errors in purchase orders and acknowledgements are subject to correction to the complete discretion of Kinova.

VI. SHIPPING AND DELIVERY

Shipment is to be made by such mode of transport as determined by Kinova, unless special arrangements are made with the End-User. Shipping charges will be paid directly by the End-User unless the End-User requests that they be invoiced by Kinova to the End-User. Kinova is not responsible for any loss, damage or delay that may occur after the Products have been accepted for shipment by the carrier. Claims for damages or lost shipments must be taken up by the End-User directly with the carrier. Shipping dates given by Kinova are approximate and are based on prompt receipt of all necessary information regarding the order.

Delivery of the Products will be made to the End-User's address indicated in the Agreement, or to the address specifically requested in writing by the End-User. The End-User agrees to make all arrangements necessary to take delivery of the Products on the day notified by Kinova for delivery.

Kinova undertakes to use its reasonable endeavours to dispatch the Products on an agreed delivery date, but does not guarantee to do so. Time of delivery is not of the essence of this contract. Failure to make shipments as scheduled does not constitute a cause for cancellation and/or for damages of any nature. If a delay is requested by the End-User or any delay is caused by lack of shipping instructions, Kinova will store all items ordered at the End-User's risk and expense to the full exoneration of Kinova, and Kinova will invoice the End-User for the full purchase price of the Products on or after the date on which the same is ready for delivery.

Kinova is not liable for any loss or damage arising directly or indirectly from any delay in the delivery or short delivery of the Products. If short delivery does take place, the End-User undertakes not to reject the Products but to accept the Products delivered as part performance of the Agreement.

VII. PRICE AND PAYMENT

Kinova will invoice the End-User for, and the End-User agrees to pay, the price and all other charges specified in this Agreement and all applicable taxes and government charges relating to the purchase, licensing and provisioning of the Products and any related services.

Payment in full of the amounts in each invoice is due on or before the date written to this effect on the invoice or, if no due date appears on the invoice, within 30 days of the date of the invoice. The End-User will pay interest on all overdue amounts at the rate written on the invoice or, if no such interest rate appears the invoice, at the rate of 1.5% per month (18% per year).

VIII. TITLE

Until End-User makes payment in full to Kinova of all amounts (in capital and interest) due hereunder and to secure the payment of all amounts due hereunder and the observance and performance of all the terms, provisions, agreements and covenants of this Agreement, Kinova (i) reserves ownership of the Product (ii) reserves the right to exercise any security and right it may have on the Products as owner, secured creditor, unpaid seller or otherwise, including the right to take back the Product in accordance with the terms of the *Civil Code of Québec* or any other law, with respect to any unpaid portion of the amounts due hereunder. The End-User agrees to comply with all formalities and sign any document required by Kinova to give effect to this reserve of ownership and to ensure it is properly set up against third persons. The End-User approves and authorizes any publications and filings required to give effect thereto and authorizes Kinova to sign, deposit and file any such document, on the End-User's behalf and without the End-User's signature, to the extent permitted by law.

Customer Initials : _____

IX. DESCRIPTION

Any description given or applied to the Products is given for identification and reference only and the use of such description does not constitute a sale by description. For greater certainty, the End-User hereby confirms that it does not in any way rely on any description of the Products given orally, in writing or otherwise when entering into this Agreement. Kinova disclaims any warranty that the Products are fit for a particular purpose.

X. LICENSE AND RESTRICTIONS

The Software is licensed, not sold, to the End-User by Kinova for use only under the terms of this Agreement. Kinova and its licensors retain ownership of the Software itself and reserve all rights not expressly granted to the End-User.

Subject to the terms and conditions of this Agreement, Kinova hereby grants to the End-User, and the End-User accepts, a non-exclusive, revocable, and non-transferable license to use the Software on the Product purchased hereunder only, under the Kinova brand, within the Field of Use and in the Territory.

Except as may be provided for in any separate software license or agreement that may be provided with the Products by Kinova or by its third party suppliers, and that, if provided, will apply to the use of any Software by the End-User, (a) the End-User will use any Software in accordance with any accompanying documentations and only in conjunction with the Products purchased hereunder, (b) the End-User will not assign, sub-license or distribute any right in the Software (c) the End-User will not, and agrees not to or enable others to, copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the Software, (d) the End-User will not copy or distribute any accompanying documentation and (e) the Software, any copy or modification of it, is and will remain the sole property of Kinova or its third party suppliers. The foregoing provisions are in addition to and do not replace the terms and conditions set forth in any third party terms and conditions.

The End-User covenants and agrees that the Products and the Software are only to be used within the Field of Use and cannot be sold to any third party. In the event that the End-User uses or allows a third party to use the Product, the Software or an Improvement outside the Field of Use or in the Restricted Field of Use, Kinova will have the right to immediately terminate this Agreement and the End-User will have to restore the Products along with any Improvements to Kinova.

XI. CONFIDENTIAL INFORMATION

“**Confidential Information**” includes (i) the terms and conditions of this Agreement (*excluding* the existence of this Agreement), and (ii) all information (a) marked as confidential or (b) that the End-User should reasonably know, by its nature or the manner of its disclosure, to be confidential, and which End-User may receive or have access to during or prior to the performance of this Agreement, including trade secrets and other non-public information, materials, data, know-how, research, systems, plans and procedures of or relating to a Party, including business plans and strategies, pricing, cost, and other financial information, marketing plans, lists of existing and prospective clients and suppliers, contractual arrangements, employee information, products and prospective products, test results, and other proprietary technologies and processes, software programs, source code, specifications, inventions, designs, developments, databases, and strategies, procedures and methodologies. Notwithstanding the foregoing, Confidential Information will not include information (x) that is independently developed by End-User or is lawfully received free of restriction from another source that, to the End-User’s knowledge, has the right to furnish such information; (y) after it has become generally available to the public by acts not attributable to the End-User or its employees, subcontractors, consultants or advisors; or (z) which, at the time of disclosure to the End-User, was known to the End-User free of restriction.

XII. NON-DISCLOSURE

The End-User will not (i) reproduce or use Confidential Information for any purpose other than the performance of its obligations or exercise of its rights under this Agreement (or any subsequent written agreement between the parties), or (ii) divulge such Confidential Information, without Kinova’s prior written consent, to anyone other than those employees, subcontractors, consultants or advisors of the End-User, or investors engaged in the day-to-day operations of the End-User, (a) who are subject to nondisclosure obligations at least as protective of such Confidential Information as the provisions set forth herein, and (b) to whom such disclosure is reasonably necessary to facilitate the End-User’s performance of its obligations or exercise of its rights under this Agreement. Notwithstanding the foregoing, in the event disclosure of Confidential Information is mandated or requested by applicable law, rule or regulation, or by an order of a court or governmental or law enforcement agency or other authority, each of competent jurisdiction, then, (x) if not so prohibited by a regulatory, law enforcement or other governmental authority or an order of a court of competent jurisdiction, the End-User required to disclose the Confidential Information will promptly notify Kinova of such requirement and (y) if so requested, the End-

User will use good faith efforts, in consultation with Kinova, to secure confidential treatment of the Confidential Information to be disclosed.

XIII. INTELLECTUAL PROPERTY.

Ownership. Kinova owns all rights, title and interest, including all Intellectual Property Rights, in and to the Products, as well as in any improvements, corrections, fixes, enhancements, updates, versions, and modifications to the Products gained, conceived, created, produced, reduced to practice, or made by Kinova, the End-User or by a third party, either or not requested by the End-user (the "Improvements").

Restrictions. The End-User understands and agrees that it must not (i) remove or replace any of the copyright, patent, trade-mark or any other notices included or placed upon the Products, in related documentation or any part thereof; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to derive the Products; (iii) create any derivative works of the Products, the Software or the Confidential Information.

Cooperation. The End-User undertakes to execute or have executed all documents and to fulfill all other formalities which could reasonably be required by Kinova to perfect or protect its rights in and to the Products and the Improvements.

XIV. WARRANTY

Subject to the terms of this clause, Kinova warrants to End-User that the Products are free of defects in materials and workmanship that materially affect their performance for a period of two (2) years from the date Kinova ships the Products to the End-User ("**Delivery Date**").

Kinova agrees to repair or replace (at Kinova's option) all Products which fail to conform to the relevant warranty provided that:

- i. Notification of the defect is received by Kinova within the warranty period specified above;
- ii. Allegedly defective Products are returned to Kinova, at the End-User's expense, with Kinova's prior authorization within thirty (30) days of the defect becoming apparent;
- iii. The Products have not been altered, modified or subject to misuse, incorrect installation, maintenance, neglect, accident or damage by excessive current or used with incompatible parts ;
- iv. The End-User is not in default under any of its obligations under this Agreement;
- v. Replacement Products must have the benefit of the applicable warranty for the remainder of the applicable warranty period.

If Kinova diligently repairs or replace the Products in accordance with this section, it will have no further liability for a breach of the relevant warranty.

Allegedly defective Products returned to Kinova in accordance with this contract will, if found by Kinova on examination not to be defective, be returned to End-User and Kinova may charge a fee for examination and testing.

The warranty cannot be assigned or transferred and is to the sole benefit of the End-User.

Where the Products have been manufactured and supplied to Kinova by a third party, any warranty granted to Kinova in respect of the Products may be passed on to the End-User.

Kinova is entitled in its absolute discretion to refund the price of the defective Products in the event that such price has already been paid.

XV. RISK

Risk in the Products is transferred to the End-User upon acceptance of the Products for shipment by the carrier. Where the End-User chooses to collect the Products itself, risk will pass when the Products are entrusted to it or set aside for its collection, whichever happens first.

XVI. LIMITATION OF LIABILITY

Kinova will not be liable, and the End-User holds Kinova harmless of any cost of procurement of substitute Products or services, property damage, personal and material injury, loss of profits, interruption of business, or any other consequential, indirect, special, punitive or incidental, based on failure to perform any services or other breach of this Agreement.

In addition, Kinova will not be liable for any loss or damages arising out of or related to any Products or Development. Kinova's total liability to the End-User's will never exceed the total amount actually paid by the End-User hereunder in connection with each individual purchase order.

Any claim against Kinova and related to this Agreement must be made, within one year of the occurrence of the cause of action by sending a written notice to Kinova to this effect.

XVII.FORCE MAJEURE

Kinova will not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and Kinova will be entitled to a reasonable extension of its obligations. If the delay persists for such time as Kinova considers unreasonable, it may, without liability on its part, terminate this Agreement.

XVIII. RELATIONSHIP OF PARTIES

Nothing contained in these Terms and Conditions may be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions may be deemed to construe either of the parties as the agent of the other.

XIX. WAIVER

The failure by either party to enforce at any time or for any period any of the other parties' obligations or the Terms and Conditions herein will not be considered a waiver of them or a waiver of the right to enforce all Terms and Conditions of this Agreement thereafter.

XX. SEVERABILITY

If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect, without amendment.

XXI. NO SET OFF

The End-User may not withhold payment of any invoice or other amount due to Kinova by reason of any right of set-off, compensate or counterclaim which the End-User may have or allege to have for any reason whatsoever.

XXII. ENTIRE AGREEMENT

These Conditions and any documents incorporating them or incorporated by them constitute the entire agreement and understanding between the parties.

XXIII. GOVERNING LAW AND JURISDICTION

This Agreement is governed by and is to be interpreted, construed and enforced in accordance with the laws of the Province of Quebec and the federal laws of Canada applicable therein, without regard to conflict of law principles.

The parties must first attempt in good faith to resolve any dispute. Each party will designate an officer with the responsibility and the authority to resolve the dispute. These officers must be nominated and meet within fifteen (15) days of the reception by a party of a dispute notice sent to the other party outlining the reasons of the dispute and the conclusion sought. The officers will then discuss the issues and negotiate in good faith to resolve the issue. In the event that parties are unable to resolve the dispute within fifteen (15) days of the first meeting of the officers or if the officers do not meet within that period, the parties agree to attorn and submit such dispute to the exclusive jurisdiction of the courts of Quebec, judicial district of Montréal.