

## GENERAL TERMS & CONDITIONS FOR SALE

THESE GENERAL TERMS AND CONDITIONS FOR SALE (the "**Terms and Conditions**" or the "**contract**") APPLY TO ALL KINOVA PRODUCTS AND TO RELATED ACCESSORIES, HARDWARE AND SOFTWARE.

All sales made by Kinova are subject to the following Terms and Conditions, and Kinova's acceptances of Product orders are expressly made conditional on the End-User's assent to these Terms and Conditions.

### 1. 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; when applicable, the term "Agreement" shall be deemed to include these Terms and Conditions;
- "**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 organization or person who buys Products for its own use and not for resale;
- "**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, formula, algorithms, concepts, inventions or know-how generally, or the expression or use of such ideas, formula, 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., having its registered office at 4333, blvd de la Grande-Allée, Boisbriand, QC, Canada J7H 1M7;
- "**Normal Use**" means the normal use as defined in the user guide for each Product;
- "**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, as further described in Schedule A;
- "**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.

## **2. 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.

## **3. 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.

## **4. QUOTATIONS**

Quotations are valid for one hundred twenty (120) days from date of issuance, after which they are null and without effect. Quotations do not include any sales, use or other taxes or duties unless specifically stated. Typographical and clerical errors in quotations are subject to correction to the complete discretion of Kinova. Quotations may be subject to change at the complete discretion of Kinova to reflect changes in customs duty rulings, tax status, exchange rate fluctuations, material or component prices and other external factors not otherwise mentioned herein.

## **5. ORDERS**

All Product orders must be in writing, and are subject to acceptance by Kinova, which acceptance may be withheld or delayed to the complete discretion of Kinova. Typographical and clerical errors in purchase orders and acknowledgements are subject to correction to the complete discretion of Kinova.

## **6. 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 in writing. Shipping charges will be paid directly by the End-User unless the End-User requests that they be paid by Kinova and then invoiced by Kinova to the End-User. Regardless of the manner of shipment, Kinova is not responsible for any loss, damage or delay that may occur after the Products have been placed at the disposal of Buyer, for collection by carrier or End-User (according to shipping terms established in the Quotation). 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 against Kinova. If a delay is requested by the End-User or any delay is caused by lack of shipping instructions from the End-User, Kinova will store all items ordered at the End-User's risk and expense to the full exoneration of Kinova.

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 partial performance of the Agreement.

## **7. CANCELLATION**

Orders accepted by Kinova are not subject to cancellation by the End-User, except with Kinova's written consent and upon terms which compensate Kinova for any and all direct, incidental and consequential loss or damage arising out of said cancellation. Any such cancellation will not give rise to any refund and a restocking fee may apply thereto.

Kinova reserves the right to cancel any accepted order in the event Kinova becomes aware of any intended use of the Product by the End-User in the Restricted field of Use. Kinova shall have no liability for any such cancellation.

## **8. PRICE AND PAYMENT**

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

Kinova will invoice the End-User for the Products on or after the date on which the same are ready for delivery.

Subject to any approved credit arrangement between End-User and Kinova, 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) or such other rate being the maximum allowable under applicable law.

## **9. TITLE OF PROPERTY**

Until End-User makes payment in full to Kinova of all amounts (in capital and interest) due under the Agreement, and to secure the payment of all amounts due under the Agreement and the observance and performance of all the terms, provisions, agreements and covenants of the Agreement, Kinova: (i) reserves ownership of the Product, and (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.

## 10. 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. End-User acknowledges that Kinova may change Products features, specifications, designs and availability. 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 the Agreement.

EXCEPT AS SET OUT IN SECTION XIV OF THE AGREEMENT, KINOVA PROVIDES NO WARRANTIES TO THE END-USER AND EXPRESSLY DISCLAIMS AND EXCLUDES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, ALL WARRANTIES, REPRESENTATIONS, PROMISES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, AND WHETHER ARISING BY STATUTE OR OTHERWISE IN LAW, FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ANY WARRANTY WITH RESPECT TO THE FUNCTIONALITY, DURABILITY, COMPATIBILITY, OPERATION OR USE OF THE PRODUCTS OR THAT THE PRODUCTS WILL MEET ANY PERSON'S REQUIREMENTS OR THAT ANY OR ALL DEFECTS WILL BE CORRECTABLE.

## 11. LICENSE AND RESTRICTIONS

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

Subject to the terms and conditions of the Agreement, Kinova hereby grants to the End-User, and the End-User hereby accepts, a non-exclusive, revocable and non-transferable license to use the Software on the Product purchased hereunder only under the Kinova brand in the Territory for use outside the Restricted Field of Use, as such term is defined in Schedule A.

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 outside of the Restricted 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 in the Restricted Field of Use, Kinova will have the right to immediately terminate the Agreement and the End-User will have to restore the Products along with any Improvements to Kinova, at the End-User's sole cost. The End-User agrees to hold harmless and indemnify Kinova for a breach of this covenant by End-User.

## 12. CONFIDENTIAL INFORMATION

"**Confidential Information**" includes: (i) the terms and conditions of the Agreement (*excluding* the existence of the 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 the 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: (a) that is independently developed by End-User, without use of any Confidential Information, or is lawfully received free of restriction from another source that, to the End-User's knowledge, after due inquiry, has the right to furnish such information, (b) after it has become generally available to the public by acts not attributable to the End-User or its shareholders, directors, officers, employees, subcontractors, consultants or advisors, or (c) which, at the time of disclosure to the End-User, was known to the End-User free of restriction.

## 13. 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 the 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 non-disclosure 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 the 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: (i) 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 in writing of such requirement, and (ii) if so requested, the End-User will use good faith efforts, in consultation with Kinova, to limit the scope of such disclosure and to secure confidential treatment of the Confidential Information to be disclosed.

## 14. 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, and (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.

## 15. PRIVACY

By purchasing the Products, the End-User agrees and understands that Kinova may store, share, process and use data collected from the End-User’ use of the Products that does not personally identify the End-User and that Kinova may also share such data globally with its subsidiaries and affiliates. In the event such data would otherwise constitute personal data as per Kinova’s Privacy Policy (available here : <https://www.kinovarobotics.com/en/privacy-policy>), Kinova would handle such information in accordance with its Privacy Policy, and agrees to maintain, with regards to such personal information, compliance with all applicable laws relating to privacy, confidentiality, and the collection, storage, and dissemination of personal information.

## 16. WARRANTY

Subject to the terms of this clause, and subject to any additional terms and conditions for purchase and use of the Products that may be contained in the Products’ user guides (available online at <https://www.kinovarobotics.com/en/knowledge-hub/all-kinova-products>) or any other documentation related to the Products, 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 (the “**Warranty**”) from the date Kinova ships the Products to the End-User (the “**Warranty Period**”).

The End-User’s exclusive remedy and sole measure of recoverable damage for breach of this limited Warranty shall be, at Kinova’s sole option, the issuance of a credit, the adjustment of the purchase price, the repair, or the replacement of Products which fail to conform to the Warranty provided that:

- i. Notification in writing 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 written authorization, within thirty (30) days of the defect becoming apparent;
- iii. The Products have not been: (a) used in a manner inconsistent with their Normal Use, (b) altered, modified or subject to incorrect installation or maintenance, neglect, accident, vandalism, improper cleaning, improper storage or the like, (c) damaged by excessive current, (d) used with incompatible

parts, or (e) used with a version of the Software not up-to-date, in which cases this Warranty will not apply and the End-User will bear all the costs under the return merchandise authorization related to such Products, including costs for repair or replacement;

- iv. The End-User is not in default under any of its obligations under this Warranty;
- v. Replacement Products must have the benefit of the Warranty for the remainder of the applicable Warranty Period; and
- vi. Kinova will bear the costs of return shipping of repaired or replaced Products to the End-User.

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

Allegedly defective Products returned to Kinova in accordance with this Agreement will, if found by Kinova on examination not to be defective, be returned to End-User at the End-User's own cost 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. For greater certainty, the Warranty shall become void in the event the End-User sales or otherwise transfers the Product to any third-party.

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.

If the End-User chooses to purchase extended warranties and services, as offered from time to time by Kinova, then such warranties and service may be subject to additional terms and conditions which will be provided to the End-User upon purchase of such extended warranty or service.

## **17. SUPPORT**

Kinova may provide technical support in accordance with, and only to the extent specified by, the terms and conditions or any service level agreement that may be established by Kinova and published in Kinova's website from time to time.

## **18. RISK**

Risk of loss or damage to 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.

## **19. LIMITATION OF LIABILITY**

Kinova will not be liable for, and the End-User holds Kinova harmless of: any cost of procurement of substitute Products or services, property damage, material injury, loss of profits, interruption of business, or any other consequential, indirect, special, punitive or incidental damage, arising from the Agreement. In addition, Kinova will not be liable for any loss or damages arising out of or related to any Development.

Kinova's total liability to the End-User's will never exceed the total amount actually paid to Kinova by the End-User hereunder in connection with each individual purchase order.

Any claim against Kinova and related to the 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.

## **20. EXPORT COMPLIANCE**

Kinova's Products are subject to the export and trade laws and regulations of Canada, the United States and other foreign authorities, and the End-User hereby understands and agrees that the Products shall be purchased, sold, exported, re-exported, transferred and used in accordance with these laws and regulations.

## **21. 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 the Agreement.

## **22. 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.

## **23. 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 the Agreement thereafter.

## **24. SEVERABILITY**

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

## **25. 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 alleged to have for any reason whatsoever.

## **26. ENTIRE AGREEMENT**



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

## **27. GOVERNING LAW AND JURISDICTION**

The Agreement is governed by and is to be interpreted, construed and enforced in accordance with the laws of the Province of Québec 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 a representative with the responsibility and the authority to resolve the dispute. These representatives 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 representatives 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 representatives or if the representatives do not meet within that period, the parties agree to attorn and submit such dispute to the exclusive jurisdiction of the courts of Québec, judicial district of Montréal.



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## **SCHEDULE A**

### **RESTRICTED FIELD OF USE**

“Restricted Field of Use” means any and all robotic manipulator arms in all endoluminal and surgical applications on humans, including interventional, imaging and diagnostic applications relating thereto, but specifically excludes any and all dental applications.