

General Terms and Conditions of Sale and Delivery of iNDAT Robotics GmbH

Section 1 General – Scope

- (1) Our Terms and Conditions of Sale and Delivery (hereinafter referred to as "Terms of Sale" or "Terms of Delivery") apply exclusively; we reject any terms and conditions of the customer contrary to or deviating from our Terms of Sale, unless we have expressly agreed to their validity in writing. Our Terms of Sale shall apply even if we execute the delivery to the customer without reservation with knowledge of terms and conditions of the customer contrary to or deviating from our Terms of Sale. We herewith expressly object to any deviating terms and conditions of our contract partner. This objection also applies against any priority declared by the contract partner of its general terms and conditions, particularly terms and conditions of purchase. This objection also applies if the contract partner has given these a particular form.
- (2) All agreements which are made between the customer and us for the purpose of executing this contract are set down in writing in this contract.
- (3) Our Terms of Sale apply only vis-à-vis entrepreneurs within the meaning of Section 301 paragraph 1 of the German Civil Code (*BGB*) and vis-à-vis public law entities.
- (4) These Terms of Delivery apply to all business transactions between the customer and us, even if they are no longer explicitly mentioned in subsequent contracts.
- (5) These Terms of Delivery apply to all contracts between the customer and us concerning the sale of materials, objects, products, details, software and to all related services (goods) as well as to all contracts for the performance of work by us.

Section 2 Offers – Offer Documents

- (1) If the customer's order can be qualified as an offer pursuant to Section 145 BGB we can accept it within 2 weeks. Our order confirmations are subject to the reservation as to our obtaining supplies ourselves to the extent that we deliver goods manufactured or delivered by third parties. Our offers are not binding. Documents accompanying the offer, such as illustrations, drawings, weights and measurements, as well as our prospectuses are not binding, unless they are expressly designated as binding.
- (2) We reserve ownership and copyright of illustrations, drawings, calculations and other documents. This also ap-

plies to such written documents which are marked "confidential". The disclosure of the above documents to third parties as well as making copies or duplicates require our prior written consent. The above applies by analogy to any software included in the delivery. This may only be used on the delivered system (machine). Any utilization by third parties is prohibited. The customer must observe rights of third parties and, in particular, license agreements, as an obligation on its part.

- (3) We are entitled to change the design or manufacture of the delivery items to the extent that this can be reasonably expected of the customer, taking account of our interests. The benchmark for reasonableness is, on the customer's part, the impacts on the value and functionality of the delivery items and, on our part, technical, in particular production requirements.

Section 3 Prices - Payment Terms

- (1) Unless otherwise specified in the order confirmation, our prices are "ex works", excluding packaging. Packaging, customs, taxes and duties, freight and insurance are billed separately.
The costs of the installation and commissioning of the subject of the contract by our staff at the customer's works are not included in the contract prices, unless otherwise agreed; they are additionally charged at reasonable and customary rates. Preparatory work at the customer's works (e.g. civil engineering works, preparation of the mounting area, power and air supply as well as other connections, lifting devices) shall be carried out by the customer at its expense.
- (2) VAT is not included in our prices; if it accrues, it shall be indicated separately in the invoice at the statutory rate on the invoice date.
- (3) Checks and bills of exchange are accepted only by prior agreement and only on account of performance.
- (4) Unless otherwise specified in the order confirmation, the purchase price is payable without any deduction within 10 days of the invoice date. The legal provisions concerning the consequences of default in payment apply. If the customer definitely stops its payments and/or a petition is filed for the institution of insolvency proceedings or judicial or extrajudicial composition proceedings against its

assets, we shall also be entitled to withdraw from the contract for the not yet fulfilled part.

- (5) The customer shall have rights of set-off and of retention only if its counterclaims have been confirmed by a final and absolute court judgment, are uncontested or are recognized by us. Moreover, it is permitted to assert a right of retention – without prejudice to the foregoing qualification – only with regard to counterclaims originating from the same contractual relationship.
- (6) We are entitled to execute the outstanding deliveries or performances only against advance payments or security if circumstances become known after the conclusion of the contract which are likely to significantly reduce the customer's creditworthiness and jeopardize payment of our outstanding claims by the customer under the respective contract (including under other individual orders to which the same framework contract applies).
- (7) The pricing is based on the material and energy prices, taxes, freight rates, wages and salaries as well as other production costs known on the date of the offer. If there is a gap of more than four months between the date of the conclusion of the contract and delivery and the cost of materials and energy, taxes, freight rates, wages and salaries and other production costs or statutory levies increase in the period between the date of the conclusion of the contract and delivery for reasons for which we are not responsible, we shall be entitled to increase the agreed price, disclosing the affected parts of the original calculation and specifying the increased cost factors relative to the scope of the cost increase, in order to compensate for the cost increase, and to charge the increased price as per the delivery date.
- (8) If payment by instalments is agreed and an instalment is not paid in due time, the entire balance will be due for payment immediately.

Section 4 Delivery Time

- (1) Stated delivery times are not binding unless they are expressly agreed as binding. If delivery times are binding accordingly, they shall commence from the date of the binding order confirmation at the earliest. An agreed delivery period shall only begin as soon as all details for the execution of the delivery and performance have been clarified and, in particular, the customer has made available the information, documents and materials to be obtained by it. If cash in advance or a payment on account is agreed, a prerequisite to commencement of the delivery time is that the customer has paid the agreed price or

made the agreed payment on account. The date of delivery to the forwarder, carrier or other third party entrusted with the transportation or, if this cannot take place for reasons for which we are not responsible, the notification of the readiness for dispatch shall be decisive for the purpose of ascertaining compliance with delivery periods and delivery dates.

- (2) In the event of unforeseen impediments beyond our control, the delivery period shall be extended by the duration of the impediment. This particularly applies to cases of force majeure. Failure to cooperate and requests of the customer for changes or supplementation of the delivery/performance likewise lead to a postponement of the dates or extension of the periods by the duration of the delay.
- (3) Compliance with our delivery obligation further presupposes timely and proper fulfilment of the customer's obligations. The defence of non-performance of the contract remains reserved.
- (4) Even if binding dates and periods are agreed, we shall not be responsible for delays in delivery and performance due to force majeure and due to events which make it more difficult or impossible for to effect the delivery – including subsequently arising material procurement difficulties, interruptions of operations, strike, lockout, shortage of staff, lack of means of transport, orders by the authorities, etc., even they occur at our suppliers or their suppliers. Such delays entitle us to postpone the delivery or performance for the duration of the impediment plus a reasonable start-up period or to withdraw from the contract wholly or partly with regard to the part not yet performed. Alternatively, we shall be entitled, in the event that the ordered product is not available for the abovementioned reasons despite timely planning, to deliver an equivalent product in terms of quality and price instead of the ordered product.

If the impediment lasts longer than three months, the customer will be entitled after granting a reasonable extension of time to withdraw from that part of the contract not yet performed.

- (5) We are entitled to effect partial performances and partial deliveries at all times unless a partial delivery or partial performance is of no interest to the customer or has been contractually excluded.
- (6) If the customer is in default of acceptance or if it culpably violates other obligations to cooperate, we shall be entitled to demand compensation for the damage suffered by

us in this regard, including any additional expenses. More extensive claims or rights remain reserved.

- (7) If the requirements of paragraph (6) are met, the risk of accidental loss or of accidental deterioration of the object of sale or of the work shall pass to the customer at the time when the customer has defaulted in acceptance of the delivery or performance or defaulted on its debts.
- (8) Claims of the customer for damages caused by default, particularly for damages due to delay and damages in lieu of performance pursuant to Sections 280 and 281 BGB are excluded. This exclusion of liability does not apply
 - a) to damage resulting from injury to life, the body or health that is caused by a negligent breach of duty by us or an intentional or negligent breach of duty of one of our legal representatives or "Erfüllungsgehilfen" (*persons employed in performing a contractual obligation for whom the principal is vicariously liable*),
 - b) to other damages caused by a grossly negligent breach of duty by us or an intentional or grossly negligent breach of duty of one of our legal representatives or "Erfüllungsgehilfen",
 - c) to mandatory liability criteria under the German Product Liability Act (*ProdHaftG*) and
 - d) to culpable – even only slightly negligent – breach of a material contractual duty by us (in this case, however, liability for damages is limited to the foreseeable, typically occurring damage in case of slight negligence).

Section 5 Passing of Risk – Packaging Costs

- (1) Unless otherwise specified in the order confirmation, delivery shall be ex works.
- (2) The mode of dispatch and packaging are subject to the dutifully exercised discretion of the seller. The risks pass to the customer upon delivery of the delivery item (the start of the loading process is decisive) to the forwarder, carrier or other third party entrusted with the dispatch at the latest, unless an earlier passing of risk is provided for in Section 4 paragraphs (6) and (7) or by law. This applies even if partial deliveries or performances are effected or we have taken on additional performances, e.g. dispatch, carriage, assembly or installation. If the dispatch or delivery is delayed due to a circumstance caused by the customer, the risk shall pass to the customer from the day on which we are ready for dispatch and have notified the customer of this. Storage costs after the passing of risk

must be borne by the customer. If we carry out the storage, the storage costs shall amount to 0.15% of the invoice amount of the delivery items to be stored per full week. The right to assert and prove additional or lower storage costs remains reserved.

In the case of contracts for work and services the risk passes to the customer upon the acceptance at the latest, unless an earlier passing of risk is provided for in Section 4 paragraphs (6) and (7) or by law. This applies even if partial deliveries or performances are effected or we have taken on additional performances, e.g. dispatch, carriage, assembly or installation.

- (3) Separate agreements apply for taking back packaging. The transport packaging must be disposed of by the customer at its expense.
- (4) If desired by the customer we shall take out transport insurance covering the delivery, the costs of which shall be borne by the customer. Unless the customer has given instructions to the contrary, we shall determine the means of transport, the route and the transport insurance without being responsible for ensuring that the quickest or cheapest option is granted.

In case of damage to or loss of the delivery items in transit the customer must arrange with the carrier for a fact finding without undue delay.

Section 6 – Liability for Defects

- (1) Claims of the customer based on defects presuppose that the customer has duly performed its obligations to carry out an inspection and to give a notice of defects owed under Section 377 of the German Commercial Code (HGB). In particular, the customer must give written notice of obvious defects without undue delay, but within 4 days of receipt of the delivery at the latest. Any transport damage must be immediately noted on the delivery note and notified to the forwarder, carrier or other third party entrusted with the transportation. Other defects, which cannot be discovered within this period even after careful examination, must be notified in writing without undue delay after discovery. Otherwise, delivered items shall be deemed approved.
- (2) The warranty is excluded for damage caused by the following reasons: unsuitable or improper use, faulty assembly or commissioning by the customer or third parties, natural wear and tear, faulty or negligent handling, unsuitable operating resources, replacement materials, defective construction work, unsuitable foundations, chem-

ical, electromechanical or electrical influences, etc., provided that we are not responsible for the above circumstances. Liability for the consequences arising from changes or repair work improperly carried out by the customer or third parties without our prior consent is excluded.

- (3) The warranty exists only on the basis that delivered machinery and systems are used in a so-called single shift operation. We are not liable for defects arising from the fact that a delivered system or machinery is used in a multi-shift operation. The warranty is excluded for damages due to incorrect information provided by the customer when placing the order, to a faulty connection to the supply networks or due to operating errors or incorrect or incomplete information provided by the customer, particularly in respect of the use, dimensions and technical requirements, as well as due to incorrect or incomplete design drawings of the customer.
- (4) The warranty shall be excluded if the customer did not follow the instructions concerning the handling, servicing and maintenance of the delivery item although the customer could be expected to do so. The same applies if spare parts other than our original spare parts or recommended by us in writing are incorporated into the delivery item or the delivery item is otherwise interfered with without our consent. The warranty does not cover normal wear and tear, in particular of wearing parts and wetted parts.
- (5) If the object of sale has a defect, we shall be obligated to take subsequent remedial measures ("Nacherfüllung"), being entitled to choose between remedying the defect or delivering a new defect-free item. In the event of the defect being remedied or in the event of a replacement we shall be obligated to bear all the expenses necessary for the subsequent performance, particularly transport, travel, labour and material costs provided
- (6) that these do not increase because the object of sale was taken to a place other than the place of performance. In the event of defects of components of other manufactures which we are unable to remedy for licensing or factual reasons, we shall, at our option, assert our warranty claims against the manufacturers and suppliers for the customer's account or assign these claims to the customer. Warranty claims against us exist for defects of this kind under the other conditions and in accordance with these Terms of Delivery only if the judicial enforcement of the abovementioned claims against the manufacturer and supplier was unsuccessful or has no prospect of success because of, for example, insolvency. For the duration of the legal dispute the limitation period for the relevant warranty claims of the customer against us shall be suspended. In addition, the parts replaced by us must be made available to us and shall pass into our ownership.
- (7) The rights to withdraw from the contract or to reduce the purchase price are available to the customer in accordance with the statutory provisions.
- (8) Claims of the customer for damages caused by defects particularly for damages in lieu of performance pursuant to Sections 280 and 281 BGB are excluded. This exclusion of liability does not apply
 - a) to damage resulting from injury to life, the body or health that is caused by a negligent breach of duty by us or an intentional or negligent breach of duty of one of our legal representatives or "Erfüllungsgehilfen",
 - b) to other damages caused by a grossly negligent breach of duty by us or an intentional or grossly negligent breach of duty of one of our legal representatives or "Erfüllungsgehilfen",
 - c) to mandatory liability criteria under the German Product Liability Act (*ProdHaftG*) and
 - d) to culpable – even only slightly negligent – breach of a material contractual duty by us, in the fulfilment of which the customer may trust to a special degree (in this case, however, liability for damages is limited to the foreseeable, typically occurring damage in the case of slight negligence).
- (9) The limitation period for claims based on defects (material defects and defects of title) is 12 months from the passing of risk. If machinery is delivered, the foregoing limitation period already expires at the end of 2000 operating hours if this event occurs before the expiration of 12 months from the passing of risk. The above limitation rules do not apply in the cases mentioned under paragraph 5) lit a) to d) or in the event of a guarantee being assumed for the quality of the delivery item; in these cases the statutory limitation period applies.
- (10) The limitation period in the case of recourse against the supplier according to Sections 478 and 479 BGB remains unaffected; this is five years from delivery of the defective item.
- (11) In case of sale of used items, particularly machinery and machinery parts, the warranty is excluded for contracts with merchants or entrepreneurs.

- (12) If a notice of defects by the customer proves unjustified, the customer shall be obliged to reimburse us for all proven expenses incurred because of the notice of defects as a result of inspecting the alleged defect or remedying the alleged defect.

Section 7 Joint Liability

- (1) More extensive liability for damages other than provided for in Section 6 is excluded, regardless of the legal nature of the asserted claim. This particularly applies to claims for damages based on culpa in contrahendo, based on other breaches of duty or claims in tort for compensation of property damage pursuant to Section 823 BGB.
- (2) The limitation under paragraph (1) shall also apply if the customer, instead of claiming compensation for the damage in lieu of performance, demands compensation for futile expenses.
- (3) To the extent that liability for damages vis-à-vis us is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, representatives and "Erfüllungsgehilfen".

Section 8 Reservation of Ownership

- (1) We reserve ownership of the object of sale until fulfilment of all claims, including future and conditional claims arising from the business relationship between the customer and us. In the event of breach of contract by the customer, particularly default in payment, we shall be entitled to take back the object of sale. Our taking back the object of sale constitutes withdrawal from the contract. After taking back the object of sale we shall be entitled to realize the same; the realization proceeds shall be offset against the customer's liabilities, less reasonable realization costs.
- (2) The customer is obligated to treat the object of sale with care, in particular, the customer is obligated to insure the object of sale adequately against damage caused by fire, water and theft at the replacement value at its expense. If servicing and inspection work is required, the customer must carry out such work at its expense in due time.
- (3) In case of attachments or other interferences by third parties, the customer must inform us in writing without undue delay to enable us to file a legal complaint pursuant to Section 771 of the German Code of Civil Procedure (ZPO). If the third party is unable to reimburse us for the

judicial and extrajudicial costs of a legal complaint pursuant to Section 771 ZPO, the customer shall be liable for the loss incurred by us.

- (4) The customer is entitled to resell the object of sale in the ordinary course of business; however, the customer hereby already assigns to us all claims equivalent to the final invoice amount (including VAT) of our claim, which accrue to it as a result of the resale against its customers or third parties, irrespective of whether the object of sale was resold without or after processing. The customer remains authorized to collect this claim even after the assignment. Our right to collect the claim ourselves remains unaffected. However, we undertake not to collect the claim as long as the customer meets its payment obligations from the collected proceeds, does not default in payment and particularly no petition has been filed for institution of composition or insolvency proceedings and payments have not been suspended. If this is the case, we may demand that the customer informs us of the assigned claims and their debtors, furnishes all the information required for the collection of the sums due, hands over the relevant documents and notifies the debtors (third parties) of the assignment.
- (5) The processing or transformation of the object of sale by the customer is always done for us as manufacturer without our incurring any obligations as a result. If the object of sale is processed with other items not belonging to us, we shall acquire coownership of the new item in the same proportion as the value of the object of sale (final invoice amount including VAT) to the other processed items at the time of the processing. Otherwise, the same shall apply to the item resulting from the processing as to the object of sale delivered subject to a reservation.
- (6) If the object of sale is inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the same proportion as the value of the object of sale (final invoice amount including VAT) to the other processed items at the time of the mixing. If the mixing is done in such a manner that the customer's item must be considered to be the main item, it is understood that the customer will transfer pro-rata co-ownership to us. The customer shall preserve the thus arising sole ownership or co-ownership for us according to the standards of liability applicable to a prudent merchant.
- (7) To secure our claims against the customer, the customer shall also assign to us the claims against a third party arising from joining the object of sale to real property.

- (8) We undertake to release, at the customer's request, the securities to which we are entitled to the extent that the realizable value of our securities exceeds the claims to be secured by more than 10%; selection of the securities to be released is incumbent on us.

Section 9 Special Provisions for Contracts for

Work and Services

- (1) The acceptance of the work shall be deemed to have taken place upon the commissioning by the customer at the latest. On completion of the work we are entitled to inform the customer about the completion and to request it to accept the work, setting a deadline. If the customer does not comment with this period, the acceptance shall be deemed to have occurred.

We are further entitled to demand a factory acceptance test at our principal place of business. An acceptance certificate shall be drawn up of this factory acceptance test. If the customer, despite a written request, which must have been sent 7 days prior to the factory acceptance test, does not attend the factory acceptance test, this shall be carried out without the customer's participation. In this case the acceptance certificate drawn up by us shall be decisive. If the customer does not object in writing to the acceptance certificate sent to it within 5 working days and demand a second factory acceptance test within this period, objections to the acceptance certificate shall be excluded. Additional costs arising from the customer's non-participation in the first factory acceptance test, particularly the costs of a second factory acceptance test, must be borne by the customer. The carrying out of the factory acceptance test means that our delivery and performance obligations have been fulfilled with the exception of the transport of the system.

- (2) The customer already assumes upon delivery of the system, machinery or other work to the customer the responsibility for the safety of and the obligation to protect the delivered items. The customer is obligated to ensure safety of the workplace at its works and observance of existing safety regulations as well reasonable working conditions for our service staff.
- (3) Unless otherwise agreed, the compensation for the work is payable as follows:
- a) 50 % payment on account on receipt of the order confirmation and presentation of an advance invoice,

- b) 40 % on receipt of our notification to the customer that the machinery, system or other work has been completed and is ready for dispatch and is available for the factory acceptance test and on receipt of the further advance invoice and
- c) the remaining amount of 10 % after acceptance and receipt of the final invoice. Repairs, spare parts and service invoices are payable immediately without any deduction. Payments must be made within 10 days of the invoice date at the latest.

Section 10 General Provisions

- (1) The assignment of claims under this contract by the customer is not permitted without our written consent.
- (2) Set-off by the customer or the assertion of a right of retention by the customer is excluded unless the customer's counterclaim has been confirmed by a final and absolute court judgment, is uncontested or is recognized by us.
- (3) We are entitled, within the scope of the German Federal Data Protection Act (*BDSG*), to store data on transactions in goods and payment transactions with the customer to the extent permitted.
- (4) Amendments and supplements as well as termination of agreements concerned including these Terms and Conditions must be in writing in order to be valid. This also applies to this requirement of writing. Transmission by fax suffices to comply with the requirement of writing; otherwise, telecommunication transmission, particularly by email, is not sufficient.
- (5) Should any of the provisions of these Terms be invalid or show a gap, the validity of the other provisions shall not be affected thereby. The invalid provisions shall be replaced and the gap in the provisions filled by an appropriate provision, the economic purpose of which comes closest, to the extent permitted by law, to what the contracting parties intended or would have intended based on the spirit and purpose of these Terms if they had considered the point.
- (6) If the customer is under an obligation to pay damages in lieu of performance (e.g. for non-performance of a material contractual obligation, particularly to pay the agreed purchase price/the agreed compensation for the work, after being set a deadline that has expired) we may demand of our contract partner, taking back the delivery item, lump-sum damages of 15 % of the agreed purchase price or compensation for the work. Our contract partner is at

liberty to prove that our damage is actually lower. We reserve the right to assert a higher claim for damages in accordance with the statutory provisions.

**Section 11 Jurisdiction - Place of Performance -
Choice of Law**

- (1) If the customer is a merchant, the courts at our principal place of business shall have exclusive jurisdiction; however, we are entitled also to file a legal complaint against the customer with the court at the customer's principal place of business. Unless otherwise stipulated in the order, our principal place of business is the place of performance.
- (2) All legal relationships between the customer and us are exclusively governed by the substantive law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and excluding the connecting factors in the rules of Private International Law.