

# KRAKEN ROBOTICS STANDARD TERMS AND CONDITIONS FOR PURCHASE

## 1. Definitions

In these terms and conditions, the following expressions have the following meaning:

“the Purchaser”	means the Kraken Robotics (Kraken) company named overleaf which places the Purchase Order;
“Affiliates”	means in respect of any company or corporation, any holding or subsidiary company thereof and any subsidiary of such holding company;
“Conditions”	means these terms and conditions for the purchase of Products and/or Services which are incorporated into and form part of the Purchase Order;
“Consequential Loss” means:	(i) consequential or indirect loss under applicable Laws; and (ii) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit, or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (i), and whether or not foreseeable at the effective date of the Contract.
“Contract”	means the contract between the Seller and the Purchaser for the supply of Products and/or Services comprising the Conditions, the Purchase Order and any documents incorporated by express reference on the face of the Purchase Order and any documents attached by the Purchaser to the Conditions;
“Issued Material”	means any property issued to the Seller by or on behalf of the Purchaser to be used in fulfilment of the Seller’s obligations;
“Laws”	means all laws, statutes, acts, codes, regulations, bylaws, ordinances, rules, restrictions, regulatory policies, common law principals, equitable principals, treaties, conventions (except as provided in Section 23.13) and international laws, and any and all other lawful requirements from whatever source, of or applicable in any national, federal, state, provincial, territorial, municipal, regional or other jurisdiction now or hereinafter in force;
“Products”	means the products, goods or items which are the subject of the Contract which may (without limitation) comprise or include Software;
“Purchase Order”	means the purchase order (in the Purchaser’s standard form) together with the Conditions;
“Purchaser Group”	means the Purchaser, and the Purchaser’s client from time to time, and its and their other contractors (other than the Seller Group) and its and their Affiliates from time to time and, in respect of all the foregoing, their respective officers, directors, employees and agents;
“Seller”	means the person, firm or company referred to on the face of the Purchase Order with whom the Contract is made with the Purchaser and references to Seller shall include any permitted sub-contractor. Seller shall ensure that any permitted sub-contractor complies with all relevant provisions of the Contract;
“Seller Group”	means the Seller and its subcontractors of any tier, its and their Affiliates, and their respective officers, directors, employees and agents;
“Services”	means work and/or services which are the subject of the Contract, and which are described in the Purchase Order which may (without limitation), comprise, include, or relate to Software;
“Software”	means any software which is comprised or included in or related to Products and/or Services.

- 1.1 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted, or replaced; references to the singular include the plural and vice versa as the context admits or requires; reference to any document means such document as amended from time to time upon written agreement of the parties; “include” or “including” means including without limiting the generality of any description preceding such term; and the headings will not affect the construction of the Conditions.

## 2 Application

- 2.1 Subject to any variation under Condition 14, or as may otherwise be specifically provided in the Purchase Order, the Conditions supercede any prior or contemporaneous oral or written agreements or communications between the

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parties, and they shall govern the Contract to the entire exclusion of all other terms and conditions. In the event of, and to the extent only of, any conflict between the Conditions and the Purchase Order, the Conditions will prevail over the Purchase Order unless such Purchase Order clearly states the parties intention to override the provisions of the Conditions.

- 2.2 Each Purchase Order for Products and/or Services by the Purchaser from the Seller shall be deemed to be an offer by the Purchaser to buy Products and/or Services subject to the Contract, and no Purchase Order shall be accepted until the Seller, either expressly by giving notice of acceptance or implied by fulfilling the Purchase Order in whole or in part, accepts the offer.
- 2.3 No terms or conditions endorsed upon, delivered, or contained within the Seller's quotation, acknowledgement or acceptance of the Purchase Order specification or any similar document shall form part of the Contract, and the Seller waives any right which it might otherwise have to rely on such terms and conditions.
- 2.4 The Contract shall apply to all of the Purchaser's purchases, and any variation to the Contract shall have no effect unless expressly agreed in writing and signed by an authorized representative of the Purchaser.

## **3 Quality and Description**

- 3.1 All Products and Services supplied shall;
  - 3.1.1 conform in all respects with the Purchase Order and specification supplied or advised by the Purchaser to the Seller, be without fault, be of the best available design, and be of the best quality materials and workmanship;
  - 3.1.2 conform with the quantity, quality, description, and any other particulars contained in the Contract;
  - 3.1.3 conform with any sample, drawing, description, and specification furnished;
  - 3.1.4 be fit for any intended use expressly or impliedly made known to the Seller by the Purchaser and any other statutory conditions implied in favour of the Purchaser;
  - 3.1.5 comply with all performance specifications in the Contract;
  - 3.1.6 comply with the best industry standards and practices;
  - 3.1.7 comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Products and/or the performance of the Services.
- 3.2 All Services supplied shall be in full accordance with the terms of the Contract and shall be executed in a proper and skilful manner by appropriately qualified and experienced personnel and conform to the relevant best industry standards and practices.
- 3.3 Notwithstanding any inspection or testing by the Purchaser, the Seller shall remain fully responsible for any Products and/or Services, and any inspection or testing by the Purchaser shall not diminish or otherwise affect the Seller's obligations under the Contract.
- 3.4 If any of the Products and/or Services fail to comply with the provisions set out in the Contract, the Purchaser shall be entitled to reject in whole or in part at any time at the Purchaser's sole discretion any Products and/or Services supplied under the Contract and in addition claim such damages as may have been sustained in consequence of Seller's breach or breaches of the Contract.

## **4 Statutory Obligations**

- 4.1 The Seller shall comply with all relevant Laws affecting its obligations and the performance of the Contract.
- 4.2 While on the Purchaser's premises, the Seller shall abide by any written or verbal instructions in relation to safety and security issued by the Purchaser.

## **5 Inspection and Rejection**

- 5.1 The Seller warrants that it has inspected and tested the Products for compliance with the Contract prior to delivery and shall, if requested, supply the Purchaser with certificates of origin and/or testing. Such certificates must state the relevant Purchase Order number together with any item number.
- 5.2 If the Products and/or Services do not comply with the Contract the Purchaser shall give notice of rejection to the Seller and, without prejudice to any of its other rights, the Purchaser may at its discretion require the Seller to comply with the Contract by expeditiously replacing or repairing as appropriate any rejected Products and replacing or otherwise righting any rejected Services, in each case at the Seller's own cost. The rejected Products shall be returned to the Seller at the Seller's own risk and expense.
- 5.3 Where the Seller repairs or replaces Products or Services, the Contract shall apply to the repaired or replaced Products or Services.

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- 5.4 The Purchaser reserves the right at reasonable times to inspect or test the Products or the Services at any stage before delivery, and the Seller shall give rights of access to premises and such facilities as the Purchaser may reasonably require for such inspection. Any inspection or test shall not impact the Purchaser's right to later reject the Products or Services.

## **6 Delivery and Risk**

- 6.1 Products and Services shall be delivered on the dates and at the rates and at the places specified in the Contract. If no place or delivery date is specified the Products and/or Services shall be delivered to the registered business address of the Purchaser, and delivery shall take place within fourteen (14) days of the date of the Purchase Order. Delivery will be in accordance with the Incoterms specified in the Contract and if no Incoterms are so specified these shall be DDP (INCOTERMS 2020) to the place specified in the Contract or the registered business address of the Purchaser. Delivery may be direct to the Purchaser's end user if so specified on the Purchase Order. The Purchaser may delay or alter such dates, rates, and places on giving the Seller reasonable notice in writing of such alterations.
- 6.2 Time of delivery is of the essence of the Contract. Any applicable liquidated damages for failure to deliver in the timescale set out in the Purchase Order shall be specified in the Purchase Order. The Seller must immediately notify the Purchaser if it is unlikely to be able to meet a delivery date.
- 6.3 If the Products are to be delivered or the Services to be performed by instalments, the Contract shall be treated as a single Contract and not separable, and failure by the Seller to deliver or perform any one instalment shall entitle the Purchaser at its option to exercise any of its rights and remedies in respect of the whole Contract.
- 6.4 The Seller shall ensure that all Products are marked in accordance with the provisions of the Contract and instructions of the Purchaser. Products shall be packed to reach the places of delivery undamaged and in good condition. The Seller shall provide in respect of each consignment of Products a packaging note detailing the Purchaser's order number, description, code number (if any) and the quantity of Products consigned. For any Products containing a hazardous substance, the Seller shall provide, a complete material safety data sheet (MSDS) for each hazardous substance for which an MSDS is required by applicable Laws in effect at the time of acceptance of the Purchase Order.
- 6.5 If the Seller fails to deliver in accordance with the Contract, then the Purchaser may cancel the Contract or any part of it and reserves all rights in damages and otherwise arising including the right to purchase substitute Products or Services elsewhere and to hold the Seller liable for any loss, expense or additional cost incurred.
- 6.6 The Products shall remain at the risk of the Seller until delivery to the Purchaser is complete and title to the Products has passed to the Purchaser.
- 6.7 Any Seller's property brought onto the Purchaser's premises will be at and remain at the risk of the Seller.
- 6.8 Any Issued Material will be at the Seller's risk while in its possession.
- 6.9 If the Seller requires the Purchaser to return any packaging material to the Seller, that fact must be stated on any delivery note to the Purchaser and any such packaging material will only be returned to the Seller at the cost of the Seller.
- 6.10 If Products are delivered to the Purchaser in excess of the quantities ordered, the Purchaser shall not be liable to pay for the excess, and any excess shall be and shall remain the Seller's risk and shall be returnable at the Seller's expense.
- 6.11 The Seller shall ensure that any items provided by the Seller or any of its sub-suppliers or any third party provided items are free from all liens and/or retention of title claims from any third party. The Seller shall be responsible for and shall defend, indemnify, and hold the Purchaser harmless from and against any and all claims, demands, losses, damages, or costs (including legal fees) expenses and liabilities in respect of all liens and attachments by any of the Seller's sub-suppliers or third parties in connection with or arising out of the Contract.

## **7 Marked Products**

- 7.1 Products marked with any mark used by the Purchaser, or its customers shall not be disposed of to any third party without the prior written consent of the Purchaser.

## **8 Title**

- 8.1 The Seller warrants that it has good title to the Products it is selling to the Purchaser. Title to the Products shall pass to the Purchaser on delivery, and title to the Services shall pass to the Purchaser on their creation, in each case without prejudice to any rights of rejection to which the Purchaser may be entitled under Clause 5. Title to Products that are returned to the Seller shall transfer to the Seller upon delivery. The Seller acknowledges that Products or Services may be sold on to an end user by the Purchaser and warrants that the Purchaser will be able to supply the end user with good title and the warranties of the Seller as set forth in the Contract.

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8.2 Clause 8.1 is without prejudice to Clause 11 in respect of Software.

## **9 Prices**

- 9.1 All prices shall be as stated in the Contract. The prices are fixed and except where otherwise stated in the Purchase Order include delivery and all other charges which shall not be adjusted save as provided in these Conditions.
- 9.2 Prices do not include any value added taxes including HST, GST or similar taxes or charges where applicable, which shall be applied by the Seller at the rate and in the manner from time to time prescribed by Law. The Seller shall be responsible for remitting or causing to be remitted all such taxes, duties or other charges relating to or arising out of the Contract, and the purchase and sale and delivery of the Products to the Purchaser and the performance of the Services.
- 9.3 No variation in the price nor extra charges shall be accepted by the Purchaser, except where agreed upon in writing.

## **10 Payment**

- 10.1 The Seller shall send to the Purchaser a detailed invoice stating the Purchase Order and the Products or the Service reference number. Terms of payment are 60 days from the date of the invoice or from the delivery of the Products or Services, whichever is the later, provided that the Purchaser does not dispute the invoice. Time for payment shall not be of the essence for the Contract. Payment by the Purchaser of an invoice shall not prejudice its right in the future to dispute any part of any invoice.
- 10.2 Without prejudice to any other right or remedy, the Purchaser reserves the right to set off any actual or anticipated amount owing at any time from the Seller to the Purchaser against any amount payable by the Purchaser to the Seller under the Contract.

## **11 Software**

- 11.1 If Products and/or Services include Software, the Seller acknowledges that the Purchaser may be selling or licencing the same on to end users and warrants that it has good title to license the Software.
- 11.2 The Seller permits the Purchaser to market and resell the Software and any accompanying documentation and hardware either alone or as part of a package.
- 11.3 The Seller undertakes to supply the Purchaser with all updates of Software and to allow it to copy them to those of its customers who hold an original copy version.
- 11.4 The Seller shall provide the Purchaser with such technical advice, assistance, data, and documentation, including source code where necessary, to enable the Purchaser to maintain the Software if it so wishes.

## **12 Confidentiality**

- 12.1 The Contract and any other information supplied by the Purchaser is confidential. Issued Material is also confidential. Use of information and Issued Material is permitted solely for the purpose of carrying out the Contract. The Seller shall not without the prior written consent of the Purchaser copy or disclose such confidential information to anyone other than those employees or agents of the Seller who need to know, and shall ensure that such employees and agents have signed appropriate confidentiality undertakings.
- 12.2 The Seller shall not without the Purchaser's written consent advertise or otherwise make known that the Seller supplies or has supplied Products or Services to the Purchaser.

## **13 Equipment and other facilities**

- 13.1 Issued Material shall be and remain the property of the Purchaser even if charged for. The Seller hereby undertakes to maintain Issued Material in good order and condition, to keep it separate from the Seller's property and to identify it as the property of the Purchaser. The Seller shall not use Issued Material except in respect of the Contract. Risk in Issued Material shall be with the Seller who shall effect comprehensive insurance against all risks of its loss or damage in an amount equal to its replacement cost and with the Purchaser's interest noted on the policy and with the Purchaser as loss payee.
- 13.2 Upon written request or termination or cancellation of the Contract, the Seller shall dispose of or return the Issued Material (as requested by the Purchaser) to the Purchaser forthwith.

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## **14 Variation of Services/Products**

- 14.1 If at any time during the course of the Contract, the Purchaser wishes to vary the Services and/or Products ordered, it shall notify the Seller and the Seller shall within seven (7) days provide a written statement of the amount by which such variation would increase or decrease:
- a) the dates, timescales, or milestones, and
  - b) the charges;
- which have been agreed in the Contract, and such other information as the Purchaser may reasonably require.
- 14.2 The implementation of any variation to the Services and/or the Products shall be subject to the agreement of the parties. The Seller shall not undertake any such variation unless specifically instructed to do so by the Purchaser.
- 14.3 All variations must be confirmed in writing by an authorised representative of the Purchaser.

## **15 Warranty**

- 15.1 Without prejudice to the Purchaser's rights under the Contract or at Law, the Seller warrants the Products and the Services shall be (a) are free from defects in materials, workmanship, manufacture, and title; (b) conform in every respect to the specifications of the applicable Purchase Order, including any drawings or specifications incorporated herein or samples furnished by the Seller; (c) are of merchantable quality and fit for the purposes intended by the Purchaser; and (d) where it is the Seller's responsibility, are free from defects in design, in each case for a period of twelve (12) months (or such longer period as may be otherwise stated in the Contract) from the date of delivery of any Products or the completion of any of the Services or from the date of delivery of any defective Products or Services repaired or replaced under the provisions of Clause 5. The Seller shall assign to the Purchaser any third party vendor or manufacturer warranties that it has the benefit of.
- 15.2 Breach of the warranty in Clause 15.1 shall, without prejudice to its other rights, allow the Purchaser to terminate the Contract and claim damages, costs, and expenses from the Seller.

## **16 Indemnity**

- 16.1 The Seller shall fully defend, indemnify, and hold the Purchaser Group harmless against any claims, liabilities, actions, damages, judicial awards, and costs (including legal costs) or expenses:
- 16.1.1 in respect of any alleged or actual infringement by any of the Products or the Services of any intellectual property right including patents, copyright, trademarks, service marks, registered designs, design rights or other third party rights, and the Seller shall at its own cost defend or settle all such claims or actions and proceedings brought or threatened to be brought against the Purchaser Group;
  - 16.1.2 sustained by the Purchaser Group or for which the Purchaser Group may be liable as a result of the Seller's failure to perform its obligations under the Contract;
  - 16.1.3 resulting from injury to, illness or death of the Seller Group personnel and/or loss of or damage to the Seller Group property arising out of or in consequence of the performance of the Contract irrespective of the negligence or wilful misconduct or breach of duty, whether statutory or otherwise, on the part of the Purchaser Group.
- 16.2 The Purchaser shall defend, indemnify and hold the Seller Group harmless against any claims, liabilities, actions, damages, judicial awards and costs (including legal costs) or expenses resulting from injury to, illness or death of the Purchaser Group personnel and/or loss of or damage to the Purchaser Group property arising out of or in consequence of the performance of the Contract irrespective of the negligence or wilful misconduct or breach of duty, whether statutory or otherwise, on the part of the Seller Group.
- 16.3 The Purchaser shall defend, indemnify and hold the Seller Group harmless from and against any action, liability, judicial awards, and costs, including reasonable legal costs, or expenses arising by reason of pollution originating from the Purchaser Group's property arising out of or in consequence of its performance of the Contract.
- 16.4 The Seller shall defend, indemnify and hold the Purchaser Group harmless from and against any action, liability, judicial awards, and costs, including reasonable legal costs, or expenses arising by reason of pollution originating from the Seller Group's property arising out of or in consequence of its performance of the Contract irrespective of the negligence or wilful misconduct or breach of duty whether statutory or otherwise on the part of the Purchaser Group.
- 16.5 The Purchaser shall defend, indemnify and hold the Seller Group harmless from and against (any and) all claims, demands, proceedings, loss actions, liabilities, judicial awards and costs, including reasonable legal costs, or/and expenses howsoever arising by reason of injury to, illness or death to any third party and/or loss of or damage to third party property arising out of or in consequence of the performance of the Contract caused by the negligence or wilful misconduct or breach of duty, whether statutory or otherwise, on the part of the Purchaser Group.

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- 16.6 The Seller shall defend, indemnify and hold the Purchaser Group harmless from and against (any and) all claims, demands, proceedings, loss actions, liabilities, judicial awards and costs, including reasonable legal costs, or expenses howsoever arising by reason of injury to illness or death to any third party and/or loss of or damage to third party property arising out of or in consequence of the performance of the Contract caused by the negligence, wilful misconduct or breach of duty, whether statutory or otherwise, on the part of the Seller Group. For the purposes of this Clause 16.6 and 16.5 "third party" shall mean any party which is not a member of the Purchaser Group or the Seller Group.
- 16.7 If Software is held to be infringing third party intellectual property rights, then the Seller undertakes at its own expense to replace or amend the Software expeditiously so that it is no longer infringing.
- 16.8 Notwithstanding any provision to the contrary elsewhere in the Contract, the Purchaser shall indemnify, defend, and hold harmless the Seller Group from the Purchaser Group's own Consequential Loss, and the Seller shall indemnify, defend, and hold harmless the Purchaser Group from the Seller Group's own Consequential Loss, in each case arising from, relating to or in connection with the performance or non-performance of the Contract.
- 16.9 The Seller undertakes to maintain insurance to cover its liabilities under the Contract, including without limitation Employer's Liability and Worker's Compensation insurance to comply with the Seller's legal liability, General Public Liability insurance in respect of the persons and property of third parties with cover to at least £5M (or the equivalent in the currency of the Purchase Order) to cover the liabilities assumed under the Contract and All Risks Physical Damage insurance in respect of the Seller Group's property including the Products.
- The Seller shall furnish the Purchaser with Certificates of Insurance evidencing insurance cover. The Seller shall ensure that its insurance contains a waiver of subrogation in favour of the Purchaser Group and names the Purchaser Group as additional insured. The existence or otherwise of such insurance and the indemnities provided thereby shall in no way limit, or be deemed to limit, the liabilities assumed by the Seller in the Contract.

## 17 Force Majeure

- 17.1 Neither party shall be liable to the other for any loss or damage which may be suffered by the other as a direct or indirect result of the performance of its obligations under the Contract being prevented, hindered or delayed by reason of circumstances or events (a "Force Majeure Event") beyond its reasonable control including acts of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm, explosion, epidemic or government action. Lack of finances or a change in economic circumstances shall not be considered a Force Majeure Event. The Purchaser shall not be liable to make any payments to the Seller during a Force Majeure Event.
- 17.2 If the Seller or Purchaser is prevented from performing its obligations under this Agreement by a Force Majeure Event which continues for more than thirty (30) days, the Purchaser may at its option terminate any affected Contract, defer the date of delivery or payment, reduce the volume of Products or Services ordered, in each case without liability to the Seller, by giving written notice.
- 17.3 The parties shall take all reasonable measures to prevent COVID-19 infection amongst the Purchaser Group and Seller Group personnel and will provide all reasonable co-operation in the prevention and mitigation of any impact of COVID-19 on the performance of the Contract. If the Contract is delayed or temporarily prevented as a result of COVID-19 the parties agree that each party shall bear its own costs in relation to such occurrence, and if the Seller or Purchaser is prevented from performing its obligations under the Contract by a COVID-19 event which continues for more than thirty (30) days, the Purchaser may at its option terminate any affected Contract, defer the date of delivery or payment, reduce the volume of Products or Services ordered, in each case without liability to the Seller, by giving written notice.

## 18 Licenses

- 18.1 If the Products or the Services supplied under the Contract require the Purchaser to have any permit or licence from any government or other regulatory authority the Contract shall be deemed conditional upon such permit or licence being granted at the required time. The Seller warrants that it has all necessary permits and licences to allow it to sell the Products and the Services to the Purchaser.

## 19 Termination

- 19.1 The Purchaser may end the Contract with immediate effect by notice in writing to the Seller in the following situations:

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- 19.1.1 if the Seller is in breach of the Contract and, in the case of breach capable of remedy, fails to remedy the breach within fourteen (14) days of being asked to do so in writing. If the breach cannot be remedied, the Purchaser can end the Contract immediately;
  - 19.1.2 if the Seller ceases or threatens to cease business, or commits an act of bankruptcy, or it or a third party takes action for it to go into liquidation unless this is to reconstruct or merge the company, or if an administrator, administrative receiver, receiver, or manager is appointed of any part of its business;
  - 19.1.3 if in the reasonable opinion of the Purchaser there occurs a material change in the financial position of the Seller which is likely to affect the Seller's ability to perform its obligations under the Contract, or;
  - 19.1.4 if there is a change in control of the Seller which in the reasonable opinion of the Purchaser adversely affects the position, rights, or interests of the Purchaser.
- 19.2 For the purposes of Clause 19.1.4 "control" means the ability to direct the affairs of another whether by virtue of contract, ownership of shares or otherwise howsoever.
- 19.3 Termination of the Contract shall not discharge either party from any existing obligation accrued due on or prior to the date of termination.
- 19.4 The Purchaser may cancel the Contract at any time by notice in writing. The Purchaser will pay for and accept delivery of all finished Products that meet the requirements of the Contract manufactured by the Seller at the date of cancellation and shall pay the Seller a fair and reasonable sum in respect of all work in progress at the date of cancellation subject to such finished Products and work in progress being transferred to the Purchaser. In relation to the Services the Purchaser shall pay for any Services satisfactorily performed up to the date of cancellation. This shall be the Seller's sole and exclusive remedy in the event of cancellation of the Contract by the Purchaser pursuant to this Clause 19.4.
- 19.5 For the avoidance of doubt, any termination or cancellation of the Contract shall not affect the continuance in force of Software licences granted to the Purchaser or its customers.

## **20 Code of Conduct for Kraken Suppliers**

- 20.1 The Seller shall comply with the Laws of the applicable legal system(s) relevant to the subject matter of the Contract. In particular, the Seller will not engage, actively or passively, nor directly or indirectly, in any form of bribery, in any violation of basic human rights of employees or any child labour. Moreover, the Seller will take responsibility for the health and safety of its employees, act in accordance with the applicable environmental Laws and will use best efforts to promote the Kraken Code of Conduct for its suppliers.
- 20.2 In addition to the other rights and remedies the Purchaser may have, the Purchaser may terminate the Contract and/or any Purchase Order issued thereunder in case of breach of this Clause 20 by the Seller.

## **21 Export Control and Foreign Trade Data Regulations**

- 21.1 The Seller shall comply with all applicable export controls, customs, and foreign trade regulations ("Foreign Trade Regulations"). The Seller shall advise the Purchaser in writing without undue delay upon receipt of any Purchase Order – and in case of any changes– any information and data required by the Purchaser to comply with all Foreign Trade Regulations in case of export and import as well as re-export, including as applicable:
- all applicable export list numbers, including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN); and
  - the statistical commodity code according to the current commodity classification for foreign trade statistics and HS (Harmonized System) coding; and
  - the country of origin (non-preferential origin); and, upon request of the Purchaser – the Seller's declaration of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers).
- 21.2 The Seller shall follow all instructions of the Purchaser and cooperate with the Purchaser's customs broker as directed by the Purchaser (including by providing requested shipping documentation) with respect to all Products that originate from sources or suppliers based outside the location of the Purchaser. The Seller shall comply with all the requirements of the applicable border agencies with respect to the importation of Products from outside the location of the Purchaser.
- 21.3 The Seller shall be liable for any expenses and/or damage incurred by Purchaser due to any breach of this Clause 21.

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## 22 Reservation Clause

- 22.1 The Purchaser's obligations under the Contract are subject to the proviso that the fulfilment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargoes or other sanctions.

## 23 Miscellaneous

- 23.1 All Intellectual Property in the work carried out under the Contract is hereby assigned to and shall vest in the Purchaser absolutely. This includes any copyright or design rights which will vest in and become the property of the Purchaser as and when such rights come into existence. The Seller shall carry out all such reasonable acts and create such documentation as the Purchaser may reasonably require for the purposes of vesting title thereto in the Purchaser. The Seller shall assume all liability for and shall defend, indemnify and hold the Purchaser harmless from and against any and all proceedings, actions, claims, losses, damages, costs, and expenses (including legal costs and expenses) and liabilities of every kind and nature for or arising out of any alleged infringement of any patent, proprietary or protected right occurring in connection with the supply of the Products and/or performance of the Services.

- 23.2 The Seller shall pay all taxes, duties, levies, charges, and contributions assessed against it in connection with the delivery of the Products and/or performance of the Services, and shall defend, indemnify, and hold the Purchaser harmless from and against any cause, proceeding, loss, liability, or payment:

- (a) in respect of any such taxation, duties, levies, charges, and contributions (including fines, penalties, and interest) assessed on the Seller Group or on any other party connected with the Seller or;
- (b) which might have been assessed or assessable as aforesaid but for the Purchaser having been first required to make such payment.

The Supplier accepts any and all withholdings that the Purchaser may be obligated to make, pursuant to Laws, from payments to the Seller under the Contract. If the Seller is exempt from any such withholding tax, it shall make available to the Purchaser such documentation and other information as may be required by the applicable taxing authority in order to establish the Seller's exemption.

- 23.3 The Purchaser reserves the right to audit all of the Seller's books of account and related documentation in respect of the Contract for a period of two (2) years or such longer period required by the Purchaser's client.

- 23.4 Without prior written consent from the Purchaser, the Seller must not sub-contract or assign the whole or any part of the Contract. If given the Purchaser consent, the Seller is not relieved of any of its obligations under the Contract. The Purchaser may attach conditions to the giving of its consent. The Purchaser may assign the Contract or any part of it to any person, firm, or company. The Purchaser may perform any of its obligations or exercise any of its rights by itself or through any member of the Purchaser Group.

- 23.5 If the Purchaser delays, forgets or chooses not to enforce its rights under the Contract it shall not affect its right to do so at a later date.

- 23.6 The Contract is the entire agreement between the parties and may not be changed unless agreed in writing by properly authorised representatives of both parties.

- 23.7 The Seller is an independent contractor and neither the Seller nor any of its employees, agents or servants shall be deemed to be employees, agents, or servants of the Purchaser.

- 23.8 All notices must be in writing and sent to the address set out in the Contract, by hand or by first class mail or by electronic mail and shall be deemed to have been served:

- if by hand, at time of delivery;
- if by first class post, two working days after posting;
- if by electronic mail, on the date and time the electronic mail is sent.

- 23.9 Other than Clause 16 which may be enforced by any other member of the Purchaser Group or the Seller Group, the Contract is not made for the benefit of any person not a party to the Contract, and no person other than the parties or their respective successors and permitted assigns, and as provided in Clause 16, shall acquire or have any right, remedy or claim under or by virtue of the Contract.

- 23.10 The Contract shall be governed and construed in accordance with Canadian law and any dispute, controversy, or claim arising out of or in connection with the Contract, or the breach, termination, or invalidity thereof, shall be referred to:

- (a) the key representatives of the parties involved in delivering/receiving the Products/Services under the Contract who shall discuss the matter in dispute and make all reasonable efforts to reach an agreement;
- (b) if no agreement is reached under Clause 23.10(a) above within forty (40) days, the dispute shall be referred to the Managing Directors of the parties;



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- (c) if no agreement is reached under Clause 23.10(b) above within twenty (20) days of expiry of the period referred to in Clause 23.10(b), the parties may attempt to settle the dispute by a form of Alternative Dispute Resolution to be agreed between the parties and failing such agreement the parties agree to submit to the exclusive jurisdiction of the Canadian Courts.
- 23.11 The Seller shall and shall procure that all other members of the Seller Group involved in the provision of the Products and/or the Services shall comply with all notification requirements and other applicable obligations under the Data Protection Act 2018, the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 or the Personal Information Protection & Electronic Documents Act (Canada) and all other legislation relating to the processing of personal data and privacy (together the “Data Protection Legislation”), which arise by applicable Laws in connection with the Contract. The terms Personal Data and Data Processor shall be as defined in the Data Protection Legislation. Notwithstanding the generality of the foregoing, where the Seller Group is processing Personal Data as a Data Processor for the Purchaser or any member of the Purchaser Group, the Seller shall ensure that it and all relevant members of the Seller Group have in place appropriate technical, organisational and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, the Personal Data) and shall:
  - (a) promptly provide the Purchaser with full co-operation and assistance and such Personal Data as the Purchaser may require to comply with any and all data access request(s) within the relevant timescales set out in the Data Protection Legislation or to satisfy itself that the Seller is complying with its obligations under the Data Protection Legislation and/or this Clause 23.11;
  - (b) promptly notify the Purchaser of any breach of the security measures required to be put in place pursuant to the Data Protection Legislation;
  - (c) ensure that no member of the Seller Group knowingly, recklessly or negligently does or omits to do anything which places any member of the Purchaser Group in breach of its obligations under the Data Protection Legislation; and
  - (d) not subcontract processing of Personal Data to any person or transfer or process Personal Data without the express prior written consent of the Purchaser.
- 23.12 If any provision of the Contract shall for any reason be held void or unenforceable, the remaining provisions shall remain in full force and effect.
- 23.13 The United Nations Convention on Agreements for the International Sale of Goods, or any amendments thereto (the “Convention”), shall not apply to any Contract. If the Convention is incorporated by reference as a Law of the jurisdiction, then to the extent permitted under the Law of such jurisdiction, the Convention shall not apply to such Contract.
- 23.14 The provisions and clauses of the Conditions which by their nature ought to survive termination or expiration including indemnities, will survive termination or expiration of the Contract, however and wherever occurring.
- 23.15 Each Contract is binding upon the Seller and the Purchaser, and upon their respective successors and permitted assigns.