

**TERMS AND CONDITIONS OF SALE  
FOR KRATZER AUTOMATION SYSTEMS AND SERVICES**

**1. PARTIES, SYSTEMS AND SERVICES COVERED BY THE CONTRACT.**

- a. **Parties.** "NI" means the National Instruments Affiliate identified on the Commercial Offer or Quote, order acknowledgement, or invoice, or in the absence of an identified National Instruments affiliate, then National Instruments Corporation. "Customer" is the entity identified in the face of Customer's order.
- b. **Systems and Services.**
  - i. These TERMS AND CONDITIONS OF SALE FOR KRATZER AUTOMATION SYSTEMS AND SERVICES (the "Terms") apply to Customer's purchase Kratzer's systems that incorporate hardware ("Hardware"), licenses to use software ("Software") and Non-NI Branded Products (Hardware, Software and Non-NI Branded Products collectively referred to as the "Systems") and training, services, and support related to Systems ("Services") from NI.
  - ii. **Software.** Software is licensed pursuant to the software license agreements provided with the software or, in the absence of such license agreements, the Kratzer Software License Agreement available at <https://www.kratzer-automation.com/fileadmin/legal/en-kratzer-software-license-agreement.pdf> at the time of the order ("SLA"). By placing an order, Customer represents that it has become familiar with and agrees to the SLA, as applicable. All software is licensed, not sold, and title to the software remains with the applicable licensor(s).
  - iii. **Non-Kratzer and Non-NI Branded Products.** "Non-NI Branded Products" means any third-party hardware, software, or service that NI sells, but does not carry a NI or Kratzer mark.
  - iv. **Services.** In addition to the terms and conditions set forth herein, any terms and conditions defined in a Commercial Offer or Quote shall also apply.

**2. THE CONTRACT.**

- a. **Terms of the Contract.** The following documents collectively constitute the "Contract", which shall have the following order of precedence: (i) the Commercial Offer or Quote; (ii) these Terms; (iii) the SLA; (iv) Exhibits and other documents attached to the Contract; and (v) Customer's order. The SLA is subject to revision, at any time, in NI's sole discretion. Customer is responsible for keeping current regarding these Terms and the terms of the SLA. The parties will interpret each term of the Contract so that all of the provisions are given as full effect as possible. In the event of any ambiguities, express conflicts or discrepancies in the other documents which are part of the Contract, Customer shall immediately submit the matter to NI for its determination and the parties shall attempt to resolve the matter in mutual agreement. This Contract shall apply unless Customer and NI have entered into a separate signed agreement applicable to the purchase of the Systems or Services. By placing an order with NI, Customer agrees to be bound by the terms of the Contract.
- b. **Customer's Terms Rejected.** NI EXPRESSLY OBJECTS TO AND REJECTS ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT AND SUCH ADDITIONAL OR DIFFERENT TERMS ARE NOT PART OF THE CONTRACT. CUSTOMER'S PURCHASE OF SYSTEMS OR SERVICES FROM NI IS LIMITED TO AND CONDITIONAL UPON CUSTOMER'S ACCEPTANCE OF THESE TERMS EXCLUSIVELY. IF CUSTOMER PROPOSES ANY ADDITIONAL OR DIFFERENT TERMS, SUCH PROPOSAL SHALL NOT OPERATE AS A REJECTION OF THE CONTRACT ONCE NI BOOKS AN ORDER AND SENDS CUSTOMER A SALES ORDER ACKNOWLEDGEMENT, IN WHICH CASE THE CONTRACT SHALL BE DEEMED ACCEPTED BY CUSTOMER WITHOUT ANY ADDITIONAL OR DIFFERENT TERMS.
- c. **Entire Agreement.** The Contract is the entire agreement between the parties regarding the Systems or Services and supersedes any prior agreements, prior orders, quotations, proposals, negotiations or understandings of the parties regarding the Systems or Services, whether written or oral. Customer

acknowledges reading the Contract, understands these terms, and agrees to be bound by them. No modification shall be effective unless in writing and signed by NI's authorized purchasing representative.

- 3. PRICES, TAXES AND PAYMENT.** Prices are set forth in the Commercial Offer or quotation ("Quote") issued by NI to Customer. All Commercial Offers expire thirty (30) days from date of issuance, unless otherwise stated in the Commercial Offer or Quote or agreed in writing. Prices exclude, and Customer shall pay, for all applicable sales, use, service, value added, and like taxes ("Taxes") arising from the purchase of the Systems and Services, unless Customer has provided NI with an appropriate exemption certificate for the delivery destination acceptable to the applicable taxing authorities. Payment is due as specified in the Commercial Offer or Quote. If Customer is approved for credit, payment shall be due within thirty (30) days of invoice; however, NI reserves the right to cancel Customer's credit terms at any time in case the Customer is in delay with any payment due. Payment shall be in the currency listed on the NI invoice. In the event of an Order for several units, each unit will be invoiced separately. All sums not paid when due shall accrue interest daily at a monthly rate of the lesser of 1.5% or the highest rate permissible by applicable law. Nonstandard invoice processes requested by Customer may be subject to a five percent (5%) processing fee and any amounts NI is required to pay to government authorities on behalf of customers (if required). Customer may not setoff, or otherwise debit against, or recoup, from any amounts due or to become due to NI or any amounts due, or to become due to Customer, however and whenever arising
- 4. ORDERS.** Orders placed by the Customer to NI for the purchase of Systems and/or Services shall be based on NI's corresponding Commercial Offer or Quote and shall always be subject to these Terms. All orders are subject to acceptance at the sole discretion of NI. Orders will be considered accepted once NI books an order and sends Customer a sales order acknowledgement. Each order shall contain a clear reference to these Terms and respective Commercial Offer or Quote; however even without such reference, the terms and conditions of these Terms will apply to the respective order. NI shall not be bound by changes to an order unless agreed by NI in writing. NI reserves the right to cancel any order if any information provided by Customer to NI is inaccurate. NI reserves the right to suspend or cancel any order if Customer has any outstanding payments due to NI or is not in good standing.
- 5. DELIVERY, RISK AND TITLE**

  - a. Risk of Loss and Title.** Unless otherwise specified in the Commercial Offer or Quote, the risk of loss and title shall be governed by this Section. The risk of loss and damage to Systems (for Software, the media) shall pass to Customer upon shipment from NI, its warehouses, or its affiliated companies. Title to the Systems shall, subject to the immediately subsequent sentence, pass to Customer upon shipment from NI or its warehouses; provided however, NI retains a security interest and right of possession in the Systems until Customer makes payment to NI in full. Notwithstanding, in countries where under the law applicable to the Contract such retention of security interest is not recognized or not enforceable, NI, for the sole purpose of securing payment, retains the title of the Systems until Customer makes full payment. Notwithstanding the foregoing, title to all software and documentation included in the Systems and or Services (including any copies thereof) and to all material supplied or used as part of the Services is retained by NI without limitation.
  - b. Delivery.** Unless otherwise specified in the Commercial Offer or Quote, delivery of Systems shall be governed by this Section. NI shall ship the Systems from NI, its warehouses, or its affiliated companies. NI will invoice the Customer for applicable charges as shipping and handling fees. Orders are entered as close as possible to the Customer's requested delivery date, if any. Delivery dates are scheduled after acceptance of orders and receipt of all necessary documents. Delivery dates are only binding as long as they are provided or explicitly confirmed in writing by NI. For orders to be delivered within the same country as the NI entity accepting the order, NI will arrange the shipping; however, Customer is responsible for all shipping and handling fees set forth in the invoice. If Customer chooses to arrange for shipping or if the order is placed with an NI entity outside the country of the applicable shipping destination, Customer is responsible for all shipping and handling, including fees, customs, formalities and clearance, unless otherwise indicated by NI. Shipment dates provided by NI are estimates only, and NI shall have no liability for losses or claims resulting from late delivery of Systems. Claims for shipment shortage shall be deemed waived unless presented to NI in writing within forty-

five (45) days of the invoice date. Great Britain and the European Union shall be deemed to be one country for the purposes of this Section.

## 6. CUSTOMER COOPERATION

- a. Customer shall provide NI with all information which NI, in its discretion, considers may be necessary to the perform the Services or delivery the Systems. This shall include, without limitation, information about the technical environment and any changes thereto, information about the current know-how and skills of the staff engaged by the Customer as well as information about the material and means provided by the Customer.
- b. Customer shall implement and maintain all technical measures pursuant to law, rule or regulation applicable to Customer's site art which are necessary for the provision of the Services by NI or the Systems.
- c. Customer shall grant NI unrestricted access to Customer's site where the Services will be performed or Systems delivered pursuant to the Contract and shall make at least one duly qualified person available to assist with performance of the Services and/or delivery of the Systems.

## 7. INSTALLATION AND WORK PERFORMED AT CUSTOMER SITE

For Systems installed and Services performed at Customer's site, the following terms shall apply:

- a. NI shall provide: (i) information necessary for preparation of the foundation where the System will be installed; and (ii) a description of any equipment necessary for NI to install the Systems and/or perform the Services at Customer's site ("Equipment").
- b. Customer shall perform the necessary work to prepare the foundation for installation of the Systems and performance of Services based upon the information provided by NI
- c. Customer shall ensure that:
  - i. NI's personnel are able to begin performance of the Services and/or installation of the Systems in accordance with the agreed upon time table;
  - ii. it has, in advance of NI's performance of the Services and/or installation of the Systems, inform NI of all safety regulations applicable to Customer's site. Customer shall promptly notify NI of any health and safety hazards which may exist or arise at Customer's site which may affect NI's performance of the Services and/or installation of the Systems.
  - iii. it has provided NI, free of charge, necessary storage to protect NI's Equipment from theft and damage.
  - iv. access routes to Customer's site are suitable for transportation of the Systems and NI's Equipment.
- d. Customer bears the risk of loss and damage to NI's Equipment, unless the loss or damage is cause by NI.
- e. In the event of delay in delivery of NI's Equipment required for installation of the Systems or performance of the Services is caused by Customer, NI shall arrange for suitable storage of NI's Equipment at Customer's risk and expense.

## 8. WARRANTY

- a. **Limited Warranty.** For a period of one (1) year from the date of delivery, NI warrants that its Hardware will be free of defects in materials and workmanship that cause the Hardware to fail to substantially conform to the then applicable NI published specifications. NI warrants that the Software (i) will perform substantially in accordance with the applicable documentation provided with the Software and the Software media will, in the form received from NI, be free from defects in materials and

workmanship. NI warrants that the Services will be performed in a good and workmanlike manner. Any rights of Customer resulting from a breach of NI's obligations regarding the Services shall become time-barred twelve (12) months after NI has provided the Services.

- b. **Systems Remedies.** If NI receives notice of a defect or non-conformance during the applicable warranty period, NI will, in its sole discretion: (i) repair or replace the affected Systems, or (ii) re-perform the affected Services. In case NI is unable to carry out repair or replacement within a reasonable period after Customer's request of remedy but not shorter than eight (8) weeks, NI will refund the fees paid for the affected Systems or Services, in which case Customer shall return the Systems to NI at NI's request. Repaired or replaced Systems will be warranted for the remainder of the original warranty period or ninety (90) days, whichever is longer. If NI elects to repair or replace Systems, NI may use new or refurbished parts or products that are equivalent to new in performance and reliability and are at least functionally equivalent to the original part or Systems. Customer must obtain an RMA number from NI before returning any Systems under warranty to NI. Customer will pay shipping expenses to send the affected Systems to NI, and NI will pay shipping expenses to return the Systems to the Customer. If, however, NI concludes, after examining and testing returned Systems, that it is not covered by the Limited Warranty in Section 8(a), NI will notify Customer and return the Systems at Customer's expense. NI reserves the right to charge a fee for examining and testing Systems not covered by the limited Warranty.
- c. **Limitations.** This Limited Warranty does not apply if the defect of the Systems resulted from improper or inadequate maintenance, installation, repair, or calibration (performed by a party other than NI); unauthorized modification; improper environment; use of an improper hardware or software key; improper use or operation outside of the specifications for the Systems; improper voltages; accident, abuse, or neglect; or a hazard such as lightning, flood, or other act of nature. Further, NI shall not be liable for any expenses or costs resulting from (i) rectifying defects or carrying out root cause analysis at the level of Customer's (end) customers and (ii) disassembling and reassembling measures beyond the NI – Customer relations regulated in this Contract.
- d. **Sole Remedy. Exclusions.** THE REMEDIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND THE CUSTOMER'S SOLE REMEDIES, AND SHALL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE. EXCEPT AS EXPRESSLY SET FORTH IN THE CONTRACT, SYSTEMS AND SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND NI DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO ALL SYSTEMS AND SERVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE FROM USAGE OF TRADE OR COURSE OF DEALING. NI DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF OR THE RESULTS OF THE USE OF THE SYSTEMS OR SERVICES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. NI DOES NOT WARRANT THAT THE OPERATION OF THE SYSTEMS WILL BE UNINTERRUPTED OR ERROR FREE. NON-NI BRANDED PRODUCTS PROVIDED BY NI TO CUSTOMER ARE NOT TESTABLE OR REPAIRABLE BY NI, AND IT MAY BE NECESSARY FOR CUSTOMER TO CONTACT THE MANUFACTURER OR THE PUBLISHER FOR SERVICE OR ANY WARRANTY CLAIMS. NI DOES NOT WARRANT, HAS NO OBLIGATION TO SUPPORT, AND SHALL HAVE NO LIABILITY FOR NON-NI BRANDED PRODUCTS. THE LIMITED WARRANTY AND NI INTELLECTUAL PROPERTY LIABILITY SECTIONS OF THESE TERMS DO NOT APPLY TO THE SALE AND PURCHASE OF NON- NI BRANDED PRODUCTS. NI DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ALL NON-NI BRANDED PRODUCTS, INCLUDING WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND CUSTOMER WAIVES, ON BEHALF OF ITSELF, ITS SUCCESSORS AND ASSIGNS, ALL CLAIMS OF NEGLIGENCE AND STRICT LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NI SHALL HAVE NO LIABILITY TO CUSTOMER OR ANYONE CLAIMING BY OR THROUGH CUSTOMER FOR ANY CONSEQUENTIAL, INCIDENTAL OR OTHER DAMAGES RESULTING FROM NON-NI BRANDED PRODUCTS PROVIDED BY NI TO CUSTOMER.

## 9. DEFENSE AND LIMITED INDEMNITY AGAINST IP INFRINGEMENT

- a. **Defense Against Third-Party Claims.** NI agrees to defend any third-party claim that alleges the Systems or Services infringe any patent, copyright, or trademark in the U.S. Canada, Mexico, Japan, Australia, Switzerland, Norway or any country of the European Union ("Claim"). Customer shall notify NI immediately upon learning of any Claim, or any allegation that the grounds for a Claim may exist, shall grant NI sole control over the defense and settlement of the Claim, and shall cooperate fully with NI in preparing a defense for any Claim.
- b. **Affected Usability of Systems and Services.** Should any judgement or settlement resulting from any Claim impose obligations on the Customer which substantially restrict or negate the fitness of the Systems and/or Services for the intended use, NI may, at its option, (i) procure for the Customer the right to continue a reasonable use of the Systems or Services; (ii) replace them with comparable Systems or Services that are free of the rights which give rise to the Claim; or (iii) request the Customer to promptly return the Systems to NI and/or terminate the use of the software Systems or Services whereas NI will refund paid fees and purchase prices pro rata for these Systems and Services.
- c. **Limited Indemnity.** Save for the provisions in Section 10, NI agrees to indemnify the Customer against any reasonable payment obligation vis-à-vis third parties based on any judgment or settlement resulting from any Claim, provided that the settlement is entered into in accordance with this Section 9.
- d. **Exclusions.** NI shall not be liable for a settlement made without its prior written consent. Notwithstanding the foregoing, NI shall have no obligation pursuant to this Section for any claim relating to or arising from (a) Customer's modifications of the Systems or Services; (b) failure to use the Systems or Services in accordance with the applicable documentation provided by NI; (c) the combination, operation, or use of the Systems or Services with any hardware, software or service not provided by NI; (d) the compliance of NI with Customer's specifications or directions, including the incorporation of any software or other materials provided by or requested by Customer; or (e) Non-NI Branded Products.
- e. **Sole Remedy for Infringement.** The foregoing subsections (a) through (d) state the Customer's sole remedy for, and the entire liability and responsibility of NI for, infringement of any patent, trademark, or copyright or other intellectual property rights to the exclusion of any other statutory or implied warranty against infringement of rights.
- f. **Precautionary Measures.** In any event, if NI believes in its reasonable opinion the Systems or Services may be alleged to be infringing, for the purposes of mitigating any potential damages, NI may, at its option, (i) procure for the Customer the right to continue a reasonable use of the Systems or Services; (ii) replace them with comparable Systems or Services that are free of such infringement; or (iii) request the Customer to promptly return the Systems to NI and/or terminate the use of the Systems or Services whereas NI will pro rata refund paid purchase prices and fees for these Systems and Services.

## 10. LIMITATION OF LIABILITY.

- a. **No Consequential Damages.** NI SHALL NOT BE LIABLE FOR (I) UNFORESEEN, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE SYSTEMS OR SERVICES; OR (II) ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH: (A) SYSTEMS OR SERVICES NOT BEING AVAILABLE FOR USE, INCLUDING ANY COSTS OF OBTAINING SUBSTITUTE SYSTEMS OR SERVICES; (B) LOSS OF, CORRUPTION OF, OR LOSS OF USE OF ANY PRODUCTS, HARDWARE, SOFTWARE OR DATA; (C) LOSS OF REVENUE, PROFIT, OR BUSINESS OPPORTUNITY; (D) BUSINESS INTERRUPTION OR DOWNTIME; OR (E) INABILITY TO ACHIEVE A PARTICULAR RESULT, EVEN IF IT IS SUGGESTION MADE BY NI.
- b. **Liability Cap.** THE TOTAL LIABILITY OF NI ARISING OUT OF, OR IN CONNECTION WITH THIS CONTRACT OR THE SYSTEMS OR SERVICES, SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER FOR THE SPECIFIC SYSTEMS OR SERVICE GIVING RISE TO SUCH CLAIM.

- c. **Applicability.** THIS SECTION 10: (1) APPLIES TO NI AND ITS LICENSORS, DISTRIBUTORS, AND SUPPLIERS (INCLUDING ITS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS); (2) REFLECTS AN ALLOCATION OF RISK BETWEEN NI AND CUSTOMER IN VIEW OF THE PURCHASE PRICE OF THE SYSTEMS AND SERVICES, (3) APPLIES EVEN IF NI HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES AND REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED OR ACTUAL NEGLIGENCE OF NI, AND (4) REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE. TO THE EXTENT THE FOREGOING LIMITATION OF LIABILITY IS UNENFORCEABLE OR FAILS OF ITS ESSENTIAL PURPOSE, THE SOLE LIABILITY OF NI TO CUSTOMER SHALL BE LIMITED TO FIFTY THOUSAND DOLLARS (\$50,000 USD).

## 11. HIGH-RISK USES AND CUSTOMER SYSTEMS

- a. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT SYSTEMS AND SERVICES ARE NOT DESIGNED, MANUFACTURED, OR TESTED FOR USE IN LIFE OR SAFETY CRITICAL SYSTEMS, HAZARDOUS ENVIRONMENTS OR ANY OTHER ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING IN THE OPERATION OF NUCLEAR FACILITIES; AIRCRAFT NAVIGATION; AIR TRAFFIC CONTROL SYSTEMS; LIFE SAVING OR LIFE SUSTAINING SYSTEMS OR SUCH OTHER MEDICAL DEVICES; OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE SYSTEMS OR SERVICE COULD LEAD TO DEATH, PERSONAL INJURY, SEVERE PROPERTY DAMAGE OR ENVIRONMENTAL HARM (COLLECTIVELY, "HIGH-RISK USES"). FURTHER, CUSTOMER MUST TAKE PRUDENT STEPS TO PROTECT AGAINST SYSTEMS AND SERVICE FAILURES, INCLUDING PROVIDING BACK-UP AND SHUT-DOWN MECHANISMS. NI EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS OF THE SYSTEMS OR SERVICES FOR HIGH- RISK USES.
- b. CUSTOMER ACKNOWLEDGES THAT IT IS ULTIMATELY RESPONSIBLE FOR VERIFYING AND VALIDATING THE SUITABILITY AND RELIABILITY OF THE SYSTEMS OR SERVICES WHENEVER THE SYSTEMS OR SERVICES ARE INCORPORATED IN CUSTOMER'S SYSTEM OR APPLICATION, INCLUDING THE APPROPRIATE DESIGN, PROCESS, AND SAFETY LEVEL OF SUCH SYSTEM OR APPLICATION. FURTHER, CUSTOMER MUST TAKE PRUDENT STEPS TO PROTECT AGAINST SYSTEMS AND SERVICE FAILURES WHEN SYSTEMS AND SERVICES ARE INCORPORATED IN A SYSTEM OR APPLICATION, INCLUDING PROVIDING BACK-UP AND SHUT-DOWN MECHANISMS.
- c. CUSTOMER SHALL DEFEND, INDEMNIFY, AND HOLD NI AND ITS AFFILIATES HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, INCLUDING LAWSUITS, ARBITRATIONS, AND/OR ADMINISTRATIVE ACTIONS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF CUSTOMER'S (I) USE OF THE SYSTEMS AND SERVICE FOR ANY HIGH-RISK USES, INCLUDING CLAIMS FOR PRODUCT LIABILITY, PERSONAL INJURY (INLCUDING DEATH) OR DAMAGE TO PROPERTY AS DETAILED IN 9(A) ABOVE, OR (II) INCORPORATION OF THE SYSTEMS OR SERVICES INTO ITS SYSTEM OR APPLICATION AS DETAILED IN 9(B) ABOVE, REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED OR ACTUAL NEGLIGENCE OF NI.

12. **FORCE MAJEURE.** NI shall not be responsible for any delay or failure to perform due to any cause beyond its reasonable control, including acts of terrorism, nature or governments; interruptions of telecommunications, power or transportation; failure of contractors or suppliers; or inability to obtain necessary labor or materials ("Force Majeure Event"). NI's estimated delivery schedule shall be extended by a period of time equal to the time lost because of any Force Majeure Event. If the Service or delivery of Systems does not take place at the agreed time or date or is interrupted due to a Force Majeure Event, NI shall be entitled to invoice Customer for the expenses incurred until the time of occurrence of the circumstance triggering the Force Majeure Event and to call back any service staff already present at the Customer's site. In the event NI is unable to perform in whole or in part because of a Force Majeure Event, NI reserves the right to cancel the applicable order without liability to Customer.

### 13. INTELLECTUAL PROPERTY

- a. **Intellectual Property Rights.** “IPR(s)” as defined herein includes patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of intellectual property right that may exist now or hereafter come into existence, regardless of whether such rights arise under the laws of the United States or any other jurisdiction. NI reserves the right to sell or license Systems, the Services or Deliverables as standard NI catalog products at its own discretion.

“Deliverables” as defined herein includes tangible and intangible materials, including hardware, systems, software, services, programming, documentation, data compilations, reports, records, design schematics, prototypes, notes, and any other results or materials provided by NI to Customer pursuant to this Contract.

NI, on behalf of itself and its licensors, retains all IPRs embedded in the Systems, Services or any other Deliverables and all IPRs in materials developed by NI while selling the Systems or providing Services to the Customer unless provided for under the Commercial Offer. As far as Systems consist of or comprise Software, this Software will be licensed to the Customer under the terms of the appropriate software licenses that are set out in the respective NI software specifications or, in the absence of any such license agreement, the SLA that is available at the time of purchase and the current version of which is available at <https://www.kratzer-automation.com/fileadmin/legal/en-kratzer-software-license-agreement.pdf>.

### 14. EXPORT AND SANCTIONS LAWS AND COMPLIANCE.

- a. Customer shall not export, re-export, or transfer, directly or indirectly, any Systems (which, for purposes of this Section, shall include the software and technology incorporated in or supplied with a Systems and Service or technical data received from NI) to any country or user to which such export, re-export or transfer is restricted by United States or other country applicable law or regulation without first obtaining any required governmental license, authorization, certification, or approval. In addition, Systems distributed from NI’s distribution centers in Europe and Malaysia may also be subject to additional licensing requirements under respective and applicable laws and regulations. Customer represents and warrants it is not ineligible or otherwise restricted by United States or other country applicable law to receive Systems. The issuance of a Commercial Offer or Quote, a sales order acknowledgment, or a Return Material Authorization (“RMA”) by NI does not constitute export or in-country transfer authorization. . NI may, in its sole discretion, require Customer to provide, end use information, an end use certificate or other applicable documentation prior to NI’s delivery of any Systems or item to Customer. See [ni.com/legal/export-compliance](http://ni.com/legal/export-compliance) for more information and to request relevant import classification codes (e.g., HTS), export classification codes (e.g., ECCN), and other import/export data.
- b. **Anti-Corruption.** Customer shall be responsible to ensure that Customer and all Customer affiliates, associates, employees, and other persons acting on Customer’s behalf conduct operations at all times in strict compliance with all applicable laws, rules, and regulations in relation to anti-corruption, anti-bribery, or similar type of laws.
- c. **Restriction for Engineering Services.** Customer may not utilize engineering services for the performance of “defense services” as defined by International Traffic In Arms Regulations 22 CFR 120.9. NI will only perform services based on its understanding and condition that the goods or services (i) are not for the use in the production or development of any item produced, purchased, or ordered by any entity with a footnote 1 designation in the license requirement column of Supplement No. 4 to Part 744, U.S. Export Administration Regulations and (ii) such a company is not a party to the transaction.

15. **GOVERNING LAW AND VENUE.** This Contract shall be governed by the laws of the State of Texas, U.S.A., without regard to principles of conflicts of laws. The parties expressly agree to submit to the personal jurisdiction of the state and federal courts in Travis County, Texas. The parties expressly agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

16. **LIMITATION PERIOD.** NI SHALL NOT BE LIABLE FOR ANY CLAIM ARISING FROM AND/OR CONCERNING THIS AGREEMENT AND/OR ITS SUBJECT MATTER BROUGHT MORE THAN TWO YEARS AFTER THE OCCURRENCE CAUSING THE LOSS AND/OR DAMAGE GIVING RISE TO SUCH CLAIM (REGARDLESS OF WHETHER SUCH OCCURRENCE WAS DISCOVERABLE AT THE TIME).

## 17. MISCELLANEOUS

- a. **Customer Bankruptcy/Insolvency.** NI may terminate the Contract upon written notice to Customer upon the occurrence of any of the following events in respect to Customer: (i) a receiver is appointed for Customer or its property, which appointment is not dismissed within sixty (60) days; (ii) Customer makes a general assignment for the benefit of its creditors; (iii) Customer commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within sixty (60) days; or (iv) Customer is liquidating, dissolving or ceasing normal business operations.
- b. **Subcontractors.** NI may use third party subcontractors (including suppliers, service providers, etc.) in the course of the fulfillment of the Contract, provided that NI ensures the service or supply provided by the subcontractor complies substantially with the terms and conditions of the Contract. NI is not liable for actions or omissions of any subcontractor.
- c. **Assignments.** Neither party may assign any of its rights or obligations hereunder without the other party's prior written consent. Such consent should not be unreasonably withheld, however, an assignment requested by Customer in connection with a change of control on Customer's side may serve as a reason for NI to deny consent and terminate the Contract.
- d. **Relationship.** The relationship between the parties to the Contract is that of independent contractors, not partners, agents or joint ventures.
- e. **No Waiver.** No delay or failure by NI to exercise any right it has pursuant to the Contract shall impair or be construed as a waiver of such right. A waiver of any provision of the Contract by NI must be in writing and shall not be construed as a waiver or modification of any other term hereof, or as a continuing waiver of any provision.
- f. **Severability.** If any part, term, or provision of the Contract is held illegal, unenforceable, or in conflict with any applicable and enforceable law, the validity of the remaining portions or provisions of the Contract shall not be affected, and the illegal, unenforceable, or conflicting part, term, or provision shall be reformed by a court of law with binding authority to the maximum extent possible to reflect the intent of the Contract. The doctrine that any ambiguity contained in a contract shall be construed against the party whose counsel has drafted the contract is expressly waived by each of the parties with respect to this Agreement.
- g. **Updates.** NI reserves the right to update these Terms at any time, effective upon posting an updated version at <https://www.kratzer-automation.com/fileadmin/legal/en-terms-conditions-of-sale-for-kratzer-systems-and-services.pdf>; however, the terms and conditions in effect at the time of purchase shall apply to that purchase of Systems or Services.
- h. **Third-Party Beneficiaries.** NI's subsidiaries and affiliates are express third-party beneficiaries of the Contract, and any such subsidiary or affiliate may exercise the rights and remedies of NI hereunder as if such party were a party to the Contract.
- i. **Survival.** Except as otherwise provided in the Contract, Customer's obligations to NI survive termination of the Contract.

*March 2023*