General Terms and Conditions
MICADO SMART ENGINEERING GmbH

1 Preamble

1.1 These General Terms and Conditions (GTC) shall apply unless the contracting parties have expressly agreed otherwise in writing. By placing an order or accepting delivery, the contracting party agrees to these General Terms and Conditions. These GTC shall also apply to future transactions unless expressly agreed otherwise. "Seller" or "MICADO" refers to MICADO SMART ENGINEERING GmbH; "Buyer" or "Customer" refers to its contracting party.

1.2 The following provisions on the delivery of goods shall also apply mutatis mutandis to services.

1.3 For assembly work, the Assembly Conditions of the Austrian Association of the Machinery and Steel Construction Industry (Fachverband der Maschinen- und Stahlbauindustrie Österreichs) shall apply additionally.

2 Conclusion of Contract

2.1 The contract shall be deemed concluded when the Seller, upon receipt of the order, has dispatched a written order confirmation and the Buyer has not demonstrably objected to it within 10 days. The order confirmation may also be issued by e-mail or any other written means of communication.

2.2 Amendments and supplements to the contract shall require the written confirmation of the Seller in order to be valid. The Buyer's terms and conditions of purchase shall only be binding on the Seller if they have been separately accepted by the Seller.

2.3 Art. 18 shall apply to export, import and other official authorisations as well as to embargo and sanctions regulations.

2.4 The Seller reserves the right to withdraw from the contract if the Buyer fails to fulfil its contractual obligations, in particular in the event of non-payment.

3 Plans and Documents

3.1 Information on weight, dimensions, capacity, price, performance and the like contained in catalogues, brochures, circulars, advertisements, illustrations, price lists, etc. shall only be binding if expressly referred to in the offer and/or the order confirmation.

3.2 Plans, sketches, cost estimates and other technical documents, which may also form part of the offer, as well as samples, catalogues, brochures, illustrations and the like, shall at all times remain the intellectual property of the Seller. Any exploitation, duplication, reproduction, distribution and handing over to third parties, publication and presentation shall only be permitted with the express consent of the owner.

3.3 All documents provided shall be treated confidentially and may not be disclosed to third parties without the express consent of the Seller.

3.4 Upon termination of the contract, all documents shall be returned without undue delay at the Seller's request.

4 Software, Licences and Intellectual Property Rights

4.1 Insofar as software is included in the scope of delivery, the Customer shall be granted, against payment of a corresponding fee, a non-exclusive, non-transferable right, unlimited in time, to use the delivered software including its documentation. It is provided for use on or for the product designated for that purpose upon payment of the corresponding fee. Use of the software on more than one system is prohibited.

4.2 The Customer may only reproduce, revise or translate the software or convert the object code into source code to the extent permitted by law (§§ 40a et seq. UrhG – Austrian Copyright Act). The Customer undertakes not to remove manufacturer information – in particular copyright notices – or to alter it without the prior express consent of MICADO.

4.3 If software of a manufacturer/upstream supplier forms part of the performance owed by MICADO, the Customer may, in addition, only use such software in accordance with the licence/terms of use of the respective manufacturer/upstream supplier; at MICADO's request, the Customer shall confirm in writing its agreement to these terms, including in relation to the respective manufacturer/upstream supplier. These licence/terms of use shall be made available to the Customer upon request, including prior to the conclusion of the contract.

4.4 All other rights to the software and the documentation, including copies thereof, shall remain with MICADO or with the manufacturer/upstream supplier of the software. The granting of sublicences by the Customer is not permitted.

4.5 The Customer undertakes not to modify the software without the express consent of MICADO and to install all software updates provided free of charge by MICADO or the respective manufacturer/upstream supplier. The Customer is obliged, upon request, to activate software settings that cause software updates to be provided and to keep pre-set settings activated.

4.6 The Customer is also obliged to make use of options for retrieving free software updates to which MICADO or the respective manufacturer/upstream supplier draws its attention.

4.7 Disclosure to third parties shall require the written consent of MICADO. Where the software is provided for the purpose of resale, it shall be ensured that the third party accepts these terms.

4.8 If the Customer declares withdrawal from the contract, the Customer's right to use any software licensed or otherwise provided by MICADO shall end. The Customer shall, at MICADO's option, (i) return all software, including any copies made, to MICADO, or (ii) destroy it and confirm this in writing to MICADO. The assertion of the defence of defects and the Customer's corresponding rights to refuse performance/rights of retention on account of defects shall remain unaffected.

4.9 Notwithstanding these provisions, MICADO shall remain entitled to create and offer similar customer-specific software solutions arising from other assignments of other customers.

4.10 In any event, MICADO shall retain a simple (non-exclusive) right to use the customer-specific solution for internal purposes.

5 Packaging

5.1 Unless otherwise agreed

a) the prices quoted are exclusive of packaging;

b) packaging shall be carried out in the customary commercial manner so as to avoid damage to the goods under normal transport conditions on the way to the agreed destination, at the Buyer's expense, and shall only be taken back by agreement

c) The Seller shall not be liable for damage to the packaging occurring during transport.

d) The type of packaging (e.g. cardboard boxes, pallets) shall be chosen at the Seller's discretion unless otherwise agreed.

6 Transfer of Risk

6.1 Unless otherwise agreed, the goods shall be deemed handed over "ex works" (EXW) (readiness for collection). The risk shall pass upon the goods being made available for collection by the Buyer.

6.2 In all other respects, the INCOTERMS in the version valid on the date of conclusion of the contract shall apply.

6.3 After the transfer of risk, the Seller shall not be liable for loss of or damage to the goods.

6.4 Unless otherwise agreed, the goods are not insured during transport. The Buyer may take out transport insurance at its own expense. The Buyer is obliged to provide evidence that such insurance has been taken out.

7 Delivery Period

7.1 Unless otherwise agreed, the delivery period shall commence on the latest of the following dates:

a) date of the order confirmation;

b) date of fulfilment of all technical, commercial and financial prerequisites for which the Buyer is responsible under the agreement;

c) date on which the Seller receives a down payment to be made prior to delivery of the goods and/or a payment security to be provided or other payment security has been opened;

d) date of the granting of all official authorisations required for the delivery (Art. 18).

7.2 The Seller shall be entitled to make partial and advance deliveries.

7.3 If delivery is delayed due to a circumstance occurring on the part of the Seller which constitutes a Ground for Exemption within the meaning of Art. 15, a reasonable extension of the delivery period shall be granted.

7.4 If the Seller is culpably responsible for a delay in delivery, the Buyer may either demand performance or declare withdrawal from the contract after setting a reasonable grace period.

7.5 If the grace period provided for in Art. 7.4 has not been used due to the fault of the Seller, the Buyer may withdraw from the contract by written notice in respect of all goods not yet delivered. The same shall apply to goods already delivered which, however, cannot reasonably be used without the goods still outstanding. In this case, the Buyer shall be entitled to reimbursement of the payments made for the goods not delivered or for the goods that cannot be used. In addition, if the delay in delivery was caused by gross negligence on the part of the Seller, the Buyer shall also be entitled to compensation for justified expenses which it had to incur up to the termination of the contract and which cannot be used further. The Buyer shall return to the Seller any goods already delivered which cannot be used.

7.6 If the Buyer does not accept the goods made available in accordance with the contract at the contractually agreed place or at the contractually agreed time, and the delay is not due to an act or omission of the Seller, the Seller may either demand performance or withdraw from the contract after setting a grace period. Once the goods have been set aside, the Seller may store the goods at the Buyer's expense and risk. The Seller shall furthermore be entitled to reimbursement of all justified expenses which it had to incur for the performance of the contract and which are not covered by the payments received.

7.7 Claims of the Buyer against the Seller on account of the Seller's delay other than those set out in Art. 7 are excluded.

7.8 The Seller shall not be liable for delays caused by force majeure or other unforeseeable, extraordinary circumstances for which it is not responsible.

7.9 The Seller undertakes to inform the Buyer without undue delay of any delays and to communicate the reasons therefor.

8 Acceptance Test

8.1 If the Buyer requires an acceptance test, this shall be expressly agreed with the Seller in writing upon conclusion of the contract. Unless otherwise agreed, the acceptance test shall be carried out at the place of manufacture or at a place to be determined by the Seller during the Seller's normal working hours. The general practice of the relevant branch of industry for acceptance tests shall be decisive. The Seller shall notify the Buyer of the acceptance test in good time so that the Buyer can attend the test or be represented by an authorised representative.

8.2 If the acceptance test shows that the delivery item is not in conformity with the contract, the Seller shall remedy any defect without undue delay and bring the delivery item into a condition conforming to the contract. The Buyer may only demand a repetition of the test in cases of material defects. An acceptance report shall be drawn up following an acceptance test.

8.3 If the acceptance test has shown that the delivery item has been executed in conformity with the contract and is in perfect working order, this shall in any event be confirmed by both contracting parties. If the Buyer or its authorised representative is not present at the acceptance test despite timely notification by the Seller, the acceptance report shall be signed by the Seller only. The Seller shall in any event send the Buyer a copy of the acceptance report, the accuracy of which the Buyer can no longer dispute even if it or its authorised representative was unable to sign it due to absence.

8.4 Unless otherwise agreed, the Seller shall bear the costs of the acceptance test carried out. However, the Buyer shall in any event bear the costs incurred by it or its authorised representative in connection with the acceptance test, such as travel and subsistence costs and expense allowances.

8.5 The Seller shall not be liable for delays in the acceptance test.

8.6 All information obtained during the acceptance test shall be treated confidentially and may not be disclosed to third parties without the express consent of the Seller. The Buyer undertakes to use all confidential information obtained during the acceptance test solely for the intended purpose and not to disclose it to third parties.

8.7 If a site acceptance test (SAT) has been agreed, the Buyer may only use the delivery item for series production or other productive purposes after the SAT has been successfully completed and the acceptance report has been signed by both parties. Prior to that time, only trial and test operation coordinated with the Seller is permitted.

8.8 If the Buyer puts the delivery item into productive use before the SAT has been successfully completed, the delivery item shall be deemed accepted upon commencement of such use, and the warranty period shall begin to run. The Seller shall not be liable for damage, scrap, rework and production losses attributable to such premature use; the Buyer shall indemnify and hold the Seller harmless in this respect.

8.9 If the SAT cannot be carried out within four weeks after delivery or notification of completion of assembly for reasons for which the Buyer is responsible, the delivery item shall be deemed accepted.

9 Price

9.1 Unless otherwise agreed, prices are ex the Seller's works, excluding loading.

9.2 Unless otherwise agreed, prices are based on the costs at the time the prices are quoted.
If more than four months elapse between the conclusion of the contract and the agreed delivery date and the costs of materials, purchased parts, energy or wages change during this period, the Seller shall be entitled to adjust the prices to the extent of the proven changes in costs; cost reductions shall be passed on to the Buyer in the same manner.

9.3 Unless otherwise stated, prices are exclusive of taxes and duties.

9.4 All prices are stated in EURO.

10 Payment

10.1 Payments shall be made in accordance with the agreed terms of payment. If no terms of payment have been agreed, one third of the price shall be due upon receipt of the order confirmation, one third upon design approval and the balance upon delivery. Irrespective of this, the invoice shall in any event be paid no later than 30 days after the invoice date.

10.2 The Buyer shall not be entitled to withhold payments on account of warranty claims or other counterclaims not acknowledged by the Seller.

10.3 If the Buyer is in default with an agreed payment or other performance, the Seller may either insist on performance of the contract and

a) postpone the performance of its own obligations until the outstanding payments or other performance have been made,

b) claim a reasonable extension of the delivery period,

c) declare the entire outstanding purchase price due,

d) provided that there is no Ground for Exemption within the meaning of Art. 15 on the part of the Buyer, charge default interest from the due date at the statutory rate pursuant to § 456 UGB (Austrian Commercial Code) (currently 9.2 percentage points above the base rate), or declare withdrawal from the contract after granting a reasonable grace period.

10.4 In any event, the Buyer shall reimburse the Seller, as further damage caused by default, for the dunning and collection costs incurred as well as any interim storage costs, but at least the lump sum pursuant to § 458 UGB.

10.5 If, upon expiry of the grace period pursuant to 10.3, the Buyer has not made the payment or other performance owed, the Seller may withdraw from the contract by written notice. At the Seller's request, the Buyer shall return goods already delivered to the Seller, compensate it for the loss in value of the goods and reimburse all justified expenses which the Seller had to incur for the performance of the contract. With regard to goods not yet delivered, the Seller shall be entitled to make the finished or processed parts available to the Buyer and to demand the corresponding portion of the sales price for them.

10.6 Unless otherwise agreed, all payments shall be made in EURO.

10.7 Any change to the Seller's bank details shall only become effective after prior consultation by telephone or in person with MICADO's accounting department. Confirmation by e-mail is not permitted.

11 Retention of Title

11.1 The Seller retains title to the goods until the Buyer has fully discharged all financial obligations under the purchase contract in question. Until that time, the Seller shall also be entitled to mark its title to the goods externally, and the Buyer is prohibited from removing or concealing such marking. Furthermore, in the event of seizure of the goods subject to retention of title or any other claim to them, the Buyer is obliged to point out the Seller's title and to notify the Seller without undue delay.

11.2 Until full payment has been made, the Buyer is prohibited from using the goods for production or for their intended purpose, unless expressly agreed with the Seller.

11.3 If the goods are processed with other items belonging to the Buyer or third parties, or become a non-independent component thereof, the Seller shall acquire co-ownership of the new item in the ratio of the invoice value of the goods delivered by the Seller to the production costs of the other items.

11.4 The Buyer is obliged to adequately insure the goods subject to retention of title against theft, damage and destruction and to provide the Seller, upon request, with evidence that such insurance has been taken out.

11.5 The Buyer may not sell, pledge or transfer by way of security the goods subject to retention of title without the prior written consent of the Seller.

11.6 If the Buyer fails to fulfil its obligations, the Seller shall be entitled to withdraw from the contract and to reclaim the goods. In this case, the Buyer is obliged to surrender the goods without undue delay.

11.7 The Seller shall be entitled to withdraw from the contract and to reclaim the goods if the Buyer becomes insolvent.

11.8 The Seller shall be entitled to realise the goods taken back at its own discretion.

12 Warranty

12.1 In accordance with the following provisions, the Seller is obliged to remedy any defect impairing fitness for use which results from a fault in design, material or workmanship. The Seller shall likewise be responsible for defects in expressly stipulated characteristics.

12.2 This obligation shall only apply to such defects as have occurred within a period of two years of single-shift operation from the time of transfer of risk or, in the case of delivery including installation, from completion of assembly.

12.3 The Buyer may only invoke this Article if it notifies the Seller in writing of the defects that have occurred without undue delay. The presumption rule of § 924 ABGB (Austrian Civil Code) is excluded.
The Seller, having been so notified, shall, if the defects are to be remedied by the Seller in accordance with the provisions of this Article, at its option:

a) rectify the defective goods on site;

b) have the defective goods or the defective parts returned to it for rectification;

c) replace the defective parts;

12.4 If the Seller has the defective goods or parts returned to it for rectification or replacement, the Buyer shall, unless otherwise agreed, bear the costs and risk of transport.
The return of the rectified or replaced goods or parts to the Buyer shall, unless otherwise agreed, be at the Seller's expense and risk.

12.5 The defective goods or parts replaced in accordance with this Article shall be at the disposal of the Seller.

12.6 The Seller shall only bear the costs of remedying defects carried out by the Buyer itself if it has given its written consent thereto.

12.7 The Seller's warranty obligation shall only apply to defects which occur in compliance with the intended operating conditions and under normal use. In particular, it shall not apply to defects resulting from: improper installation by the Buyer or its agents, poor maintenance, poor repairs or alterations, or repairs or alterations carried out without the Seller's written consent, by a person other than the Seller or its agents, normal wear and tear.

12.8 For those parts of the goods which the Seller has obtained from a subcontractor prescribed by the Buyer, the Seller shall only be liable within the scope of the warranty claims to which it is itself entitled against the subcontractor. If goods are manufactured by the Seller on the basis of design specifications, drawings or models of the Buyer, the Seller's liability shall not extend to the correctness of the design but to the execution having been carried out in accordance with the Buyer's specifications. In such cases, the Buyer shall indemnify and hold the Seller harmless in the event of any infringement of intellectual property rights. The Seller assumes no warranty when accepting repair orders or in the case of modifications or conversions of old or third-party goods, or in the case of delivery of used goods.

12.9 From the commencement of the warranty period, the Seller assumes no liability beyond that set out in this Article.

12.10 The limitation period for warranty claims shall be two years from the time of transfer of risk or, in the case of delivery including installation, from completion of assembly.

13 Liability

13.1 It is expressly agreed that the Seller shall not be liable to pay the Buyer damages for damage to goods which are not the subject matter of the contract, for other damage and for loss of profit, unless the circumstances of the individual case show that the Seller is guilty of gross negligence. The reversal of the burden of proof pursuant to § 1298 ABGB is excluded. Liability for personal injury shall remain unaffected.

13.2 The object of purchase only offers the degree of safety that can be expected on the basis of approval regulations, operating instructions, the Seller's instructions on the handling of the object of purchase – in particular with regard to any prescribed inspections – and other information provided.

13.3 In the event of proven slight negligence on the part of the Seller, damages shall, insofar as liability is not excluded under Art. 13.1, be limited to 5 % of the order value, but to a maximum of EUR 100,000.

13.4 All claims for damages arising from defects in deliveries and/or services must – unless the defect is expressly acknowledged by the Seller – be asserted in court within one year after expiry of the contractually agreed warranty period, failing which the claims shall lapse.

13.5 The Seller shall not be liable for damage caused by force majeure, including but not limited to natural disasters, war, terrorist attacks, official orders or other unforeseeable events for which it is not responsible.

14 Consequential Damage

14.1 Subject to any provisions to the contrary in these terms, the Seller's liability towards the Buyer for production downtime, loss of profit, loss of use, loss of contracts or any other economic or indirect consequential damage is excluded, except in cases of intent or gross negligence. Indirect and consequential damage comprises all damage which is not directly caused by a defect in the goods but arises as a consequence thereof.

15 Grounds for Exemption

15.1 The parties shall be released, in whole or in part, from timely performance of the contract if they are prevented from doing so by events of force majeure. Events of force majeure shall exclusively be events which are unforeseeable and unavoidable for the parties and which do not originate from their sphere. Strikes and industrial action, however, shall be regarded as an event of force majeure. Examples of force majeure are natural disasters, war, terrorist attacks, official orders, embargo and sanctions measures, the refusal, revocation or delay of official authorisations (Art. 18) and other unforeseeable events.

15.2 The Buyer prevented by an event of force majeure may, however, only invoke the existence of force majeure if it hands over to the Seller without undue delay, but no later than within 5 calendar days, regarding the beginning and foreseeable end of the impediment, a registered statement confirmed by the relevant governmental authority or chamber of commerce of the country of delivery on the cause, the expected effect and the duration of the delay. The Seller is likewise obliged to inform the Buyer without undue delay of the existence of force majeure.

15.3 In the event of force majeure, the parties shall make every effort to eliminate or mitigate the difficulties and foreseeable damage and shall keep the other party continuously informed thereof. Otherwise, they shall be liable to the other party for damages. Deadlines or time limits which cannot be met due to the impact of force majeure shall be extended by no more than the duration of the effects of the force majeure or, where applicable, by a period to be determined by mutual agreement.

15.4 If a circumstance of force majeure lasts for more than four weeks, the Buyer and the Seller shall seek, by way of negotiation, a settlement of the effects on the performance of the contract. Should no mutually agreed solution be reached, the Seller may withdraw from the contract in whole or in part.

16 Data Protection

16.1 The Seller shall be entitled to store, transmit, process and delete personal data of the Buyer in the course of business dealings. The data are processed on the basis of the performance of the contract pursuant to Art. 6(1)(b) GDPR.

16.2 The personal data shall be processed exclusively for the purpose of performing the contract and maintaining the ongoing business relationship. Data shall only be disclosed to third parties if this is necessary for the performance of the contract or if the Buyer has given its express consent.

16.3 The parties undertake to maintain absolute confidentiality towards third parties with regard to the knowledge they have acquired from the business relationship.

16.4 The Buyer has the right of access, rectification, erasure and objection with regard to its stored personal data. Requests in this regard may be addressed to office@micado.at.

16.5 The Seller takes appropriate technical and organisational measures pursuant to Art. 32 GDPR to ensure the security of personal data and to protect it against unauthorised access, loss or destruction.

17 Place of Jurisdiction, Applicable Law, Place of Performance

17.1 The place of jurisdiction for all disputes arising directly or indirectly from the contract shall be the Austrian court having local jurisdiction for the Seller's registered office. However, the Seller may also bring an action before the court having jurisdiction for the Buyer.

17.2 If the Buyer is domiciled outside the European Union, then, notwithstanding Art. 17.1, all disputes arising out of or in connection with the contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with those Rules. The seat of arbitration shall be Innsbruck, Austria; the language of the arbitral proceedings shall be English, unless the parties agree on German. In all other respects, the parties may separately agree on the jurisdiction of an arbitral tribunal.

17.3 The contract shall be governed by Austrian law, excluding the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, Austrian Federal Law Gazette (BGBl.) 1988/96. This choice of law shall not apply where mandatory consumer protection provisions of the country in which the Buyer has its habitual residence deviate therefrom.

17.4 The place of performance for delivery and payment shall be the Seller's registered office, even if handover takes place at another location by agreement.

17.5 The contractual language is German. If these GTC are also available in another language, the German version shall prevail in case of doubt.

17.6 Should individual provisions of these GTC be or become invalid or unenforceable, the validity of the remaining provisions shall remain unaffected. The invalid provision shall be replaced by a valid provision which comes closest to the economic purpose of the invalid provision.

18 Export Control and Sanctions

18.1 Performance of the contract by the Seller is subject to the proviso that it is not prevented by any obstacles arising from national or international regulations of foreign trade and export control law, in particular the Austrian Foreign Trade Act 2011 (AußWG 2011), the Austrian War Materials Act (KMG), Regulation (EU) 2021/821, and embargoes and sanctions of the European Union, the United Nations and – where applicable – the USA.

18.2 If an official authorisation is required for the delivery or service, the Seller's obligation to deliver and perform shall be subject to the condition precedent that such authorisation is granted. The Seller shall apply for the authorisations required for export; import and other authorisations required in the country of destination shall be obtained by the Buyer at its own expense. The Buyer shall provide all information and documents required for this purpose, in particular end-user certificates, without undue delay, completely and truthfully.

18.3 Delivery periods shall commence no earlier than upon the granting of the authorisation. Delays caused by review or authorisation procedures shall extend the delivery periods accordingly; Art. 7.4, 7.5 and 7.7 shall not apply in this respect.

18.4 If a required authorisation is refused, revoked, restricted or made subject to unreasonable conditions, if it is not granted within six months after the order confirmation, or if new embargo or sanctions measures preclude performance of the contract after its conclusion, the Seller shall be entitled to withdraw from the contract in whole or in part. Claims for damages, contractual penalties or other claims of the Buyer are excluded in such cases, except in cases of intent or gross negligence on the part of the Seller. Payments made shall be refunded, less the value of the services rendered by the Seller at the express request of the Buyer before the authorisation was granted.

18.5 The Buyer undertakes to use the goods exclusively for the stated end use and at the stated end user. Any transfer or re-export shall only be permitted in compliance with all applicable export control regulations and, where the authorisation so provides, with the prior consent of the competent Austrian authority.

18.6 The Buyer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or to Belarus, or for use therein, any goods and technology falling under Art. 12g of Regulation (EU) No 833/2014 or Art. 8g of Regulation (EC) No 765/2006. It shall ensure that any further purchasers in the supply chain also comply with this obligation. A breach constitutes a material breach of contract and entitles the Seller to immediate withdrawal. In addition, the Buyer shall pay a contractual penalty amounting to 20 % of the order value, but at least EUR 50,000; further claims shall remain unaffected.

18.7 The Buyer shall inform the Seller without undue delay of any circumstances indicating a breach of Art. 18.5 or 18.6 and shall indemnify and hold the Seller harmless in the event of a breach for which the Buyer is responsible.