

## **Intramotion Division of FlexLink Systems GmbH**

### **General Terms and Conditions of Sale, December 2017**

#### **§ 1 Applicability**

(1) Intramotion is a branch of FlexLink Systems GmbH. All goods, services and offers supplied by Intramotion ("hereinafter Intramotion") shall be subject to these terms and conditions. These are material parts of all contracts, which Intramotion concludes with its contractual parties (hereinafter "Contractual Party") regarding the deliveries and services it supplies. They also apply to all future goods or performance or offers supplied to the Contractual Party, even if they are not separately agreed again.

(2) Terms and conditions of the Contractual Party or third parties do not apply, even if Intramotion does not expressly object in individual cases. Even if Intramotion refers to a letter containing the terms and conditions of the Contractual Party or a third party or refers to them, it does not constitute agreement with their terms and conditions.

#### **§ 2 Offer and Conclusion of Contract**

(1) All Intramotion offers are not binding, unless they are expressly designated as binding or contain a time limit of acceptance. Intramotion may accept orders or contracts within fourteen days after receipt.

(2) Only a contract concluded in writing including these Terms and Conditions between Intramotion and the Contractual Party are legally valid. Such contract includes all agreements between the parties to the contract completely. Verbal commitments by Intramotion before entering into such contract are not legally binding and verbal agreements between the parties will be replaced by the written contract, unless such verbal agreements expressly imply that they remain in force.

(3) Additions and amendments to agreements, including these General Terms and Conditions must be in writing to be valid. With the exception of managing directors or authorized officers, employees of Intramotion are not authorized to make verbal agreements deviating from the contract. Any addition or amendment in writing can be sent by fax, but any telecommunication transmission, especially via e-mail, is insufficient. (4) Details provided by Intramotion regarding the object or services to be supplied (e.g. weights, measurements, utilization values, load capacity, tolerances and technical specifications), and our representations of the same (eg drawings and illustrations) are only approximate, unless the suitability for the contractually intended purpose requires an exact match. Such details are not guaranteed properties but descriptions or markings of the order or services.

Commercially standard deviations and variances due to legal regulations or technical improvements and the replacement of components by equivalent parts are permitted, provided they do not affect the suitability for the contractually intended purpose.

(5) Intramotion retains ownership or copyrights to all offers and cost estimates made by it as well as to any drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids provided to the Contractual Party. Without express authorization by Intramotion, the Contractual Party is prohibited from

making such goods neither accessible as such nor its content to any third party, from making them public, from using them themselves or by third parties or from duplicating them. At the request of Intramotion, the Contractual Party shall return such goods to Intramotion and shall destroy any copies when they are no longer needed in the ordinary course of business, or if negotiations do not result in a contract.

### § 3 Prices and Payment

(1) The prices are valid for the scope of the order and services listed in the order confirmation. Any additional or special services is charged separately. Prices are in euro, ex warehouse of Intramotion plus packing and VAT, for export deliveries plus customs duties, and fees and other public charges.

(2) If the agreed prices are based on the listed prices of Intramotion and if the delivery is more than four months after the conclusion of the Contract, the Intramotion list price current at the time of delivery shall apply, (in each case, less any such agreed percentage discount or fixed discount).

(3) Invoices are payable immediately, within seven days after the date of invoice, unless otherwise agreed in writing by stipulations below or by individual agreement respectively. The date on which the payment is received by Intramotion shall apply. The date on which checks are credited to the bank account shall apply. If the Contractual Party fails to pay when due, the outstanding amounts are subject to 9 percentage points p. a. interest charge above the base interest rate, claiming higher interest and further damage in the event of default remains unaffected.

(4) Regarding the sale of components, the invoicing of the total amount shall take place at the time when the goods are made available. The invoice is payable at the time of receipt of the goods, but no later than 10 days after notification of the availability of the goods. For project business with an order value up to 20,000 euros, the invoicing of the total amount shall take place at the time of order confirmation. The invoice is payable when the goods are received, but no later than 10 days after notification of the availability of the goods. Regarding project business in the form of a pre-installed systems with a total value above 20,000 euros, the goods shall be invoiced in the amount of 30% with the order confirmation by Intramotion, in the amount of 30% after dispatch of the goods and the confirmation of the approval- layout of the Intramotion systems by the customer, but no later than 10 days after the date of dispatch of the approval-layout by Intramotion, and in the amount of 40% after the date of dispatch of the Intramotion system, but no later than 10 days after the notice of availability. Regarding project business in the form of a system with final installation and/or starting-up with a final value above 20,000 euros, the invoicing takes place in the amount of 30% after order acknowledgement, in the amount of 30% after the confirmation of the approval- layout of the Intramotion systems by the customer but no later than 10 days after the date of dispatch of the approval-layout by Intramotion, in the amount of 30% after the date of dispatch of the Intramotion system, but no later than 10 days after the notice of availability, and in the amount of 10% after the acceptance of the contractually agreed performance, but no later than 10 days after the notice of availability if the acceptance is delayed due to reasons for which Intramotion is not responsible.

(5) The setting-off with counterclaims or the withholding of payments due to such claims shall be admissible only if

the counterclaims are undisputed or legally binding.

(6) Intramotion is entitled to complete any outstanding orders or services only against advance payment or security, if after the conclusion of the contract Intramotion becomes aware of circumstances which may significantly reduce the creditworthiness of the Contractual Party and by which the payment of the outstanding debts of the Intramotion by the principal of the respective contract (including other individual orders which are subject to the same umbrella contract) is at risk.

#### **§ 4 Delivery and delivery time**

(1) Delivery shall be effected ex warehouse of Intramotion.

(2) Deadlines and dates for deliveries and services pointed out by Intramotion are always only approximate, unless specifically a fixed period or a fixed date are accepted or agreed by Intramotion. If shipment is agreed upon, delivery times and dates refer to the time of delivery to the first carrier, freight forwarder or other third parties entrusted with the transportation.

(3) Intramotion may - without prejudice to its rights if the Contractual Party is in default - demand an extension of delivery and services deadlines or a postponement of delivery and services dates in the amount of that time period during which the Contractual Party does not fulfill its contractual obligations to Intramotion. (4) Intramotion is not liable for the inability to deliver or for delays in delivery caused by force majeure or other events, which could not be foreseen at the time the contract was concluded (e.g. malfunctions of any kind, difficulties in obtaining materials or energy, transport delays, strikes, legal lockouts, shortage of labor, energy or raw materials, difficulties in obtaining necessary regulatory approvals, regulatory actions or supplier failing to supply at all, or to supply incorrectly or too late), and which Intramotion is not responsible for. If such events complicate the order or services significantly or make it impossible, and if such hindrances are not of a temporary nature, Intramotion is entitled to rescind the contract. In case of hindrances of a temporary duration, the order or services periods are extended or the order or services dates are moved in relation of the resulting delays plus a reasonable start-up period. If due to the delay, the Contractual Party cannot be reasonably expected to accept delivery or services, he may cancel the contract with Intramotion by immediate written notice.

(5) Intramotion is entitled to make partial deliveries only if the partial delivery can be utilized by the Contractual Party within the framework of the contractual intended use, if the delivery of the remaining ordered goods is ensured and if such partial delivery does not cause any significant additional costs for the Contractual Party (unless Intramotion agrees to pay such costs).

(6) If Intramotion is in default regarding an order or services or if Intramotion, for whatever reason, is unable to perform or deliver, Intramotion is liable for damages under the provisions of § 8 of these Terms and Conditions.

#### **§ 5 Place of performance, shipping, packaging, transfer of risk, acceptance**

(1) Place of performance for all obligations under the contract is Bielefeld, unless otherwise specified. If Intramotion also owes the installation, the place of performance is the location where the installation is to be made.

(2) The transport mode and packaging are subject to the dutiful judgment of Intramotion.

(3) The risk shall pass to the buyer on delivery of the object to the first carrier, forwarding agent or any other third party assigned to carry out the shipment to the customer (the start of the loading process shall apply). This applies even if partial deliveries are carried out or if Intramotion performs other services (for example shipping or installation). If the delivery or the hand-off is delayed due to circumstances for which the Contractual Party is responsible for, the risk is passed to the Contractual Party from the day the delivery item is ready for dispatch and Intramotion has notified the Contractual Partner.

(4) Storage costs after the transfer of risk shall be borne by the Contractual Partner. If Intramotion performs the storage service, storage costs will amount to 0.25% per full week of the invoiced amount of the goods to be stored. The assertion and evidence of additional or lower storage costs are reserved.

(5) The transport will be insured by Intramotion only at the express request of the Contractual Party and at his expense for theft, breakage, transport, fire and water damage or other insurable risks.

(6) In as far as the purchased goods or performance must be accepted, they shall be deemed accepted if

- both the delivery, and if Intramotion owes the installation, and the installation are completed, • Intramotion has accordingly informed the Contractual Party pointing out the deemed acceptance under this § 5 (6), and requesting the acceptance,

- twelve working days have passed since the date of delivery or installation or the Contractual Party has begun to use the goods (for example, has put the delivered system in operation) and in this case, six working days have passed since the delivery or installation thereof, and

- the Contractual Party has failed to perform the acceptance within this period for any reason other than due to a defect of which the Contractual Party has notified Intramotion, a defect which makes the use of the purchased goods or the work performance impossible or significantly impaired.

## **§ 6 Warranty, material defects**

(1) Intramotion assumes a warranty for the properties and functionality of their products or services that are contained in the Offer Document or Price Document, which Intramotion has made available to the Contractual Partner. Intramotion assumes no further liability for the suitability of their products and services or for the expected or normal use of the products or services. All product and services descriptions, technical data, specifications and services data in these Terms and Conditions, in the Order Document or Price Document, in other contract-related documents or correspondence between Intramotion and the Contractual Party represent only product and performance descriptions, they cannot be interpreted or construed as guarantees, guaranteed characteristics or warranted within the meaning of the Civil Code.

(2) The warranty period is one year from the date of delivery or, if acceptance is required, from the date of acceptance.

(3) The delivered goods are to be promptly and thoroughly inspected after delivery to the Contractual Party or its

designated third party. They are considered approved unless Intramotion has, in compliance with § 2 (2) sentence 6, received a written complaint regarding obvious defects or other defects which could have been detected on an immediate and thorough investigation, within seven working days after delivery of the goods or within seven working days after the discovery of the defect or any earlier date, on which the defect during normal use of the goods without further investigation was evident to the Contractual Partner. At the request of Intramotion the defective item is to be returned to Intramotion free domicile. For a justifiable claim Intramotion reimburses the cost of the cheapest shipping method, which does not apply if the costs increase because the defective item to be returned is at a location other than the location of its intended use.

(4) In case of defects of the goods supplied, Intramotion is obligated and entitled within a reasonable period to opt for repair or replacement. In case of failure, ie. the impossibility, unreasonableness, refusal or unreasonable delay of repair or replacement, the Contractual Party may, after setting a reasonable deadline, cancel the contract or reduce the purchase price reasonably.

(5) If Intramotion is at fault regarding a defect, the Contractual Party may, in accordance with the provisions of § 8 above, demand compensation.

(6) If components of other manufacturers are defective, which Intramotion cannot remedy due to licensing or factual reasons, Intramotion has the option to either assert the warranty claims against the manufacturers and suppliers at the Contractual Partner's expense or assign them to the client. Warranty claims against Intramotion for such defects under other conditions and under these General Terms and Conditions are valid only if the legal enforcement of the aforementioned claims against the manufacturers and suppliers was unsuccessful or, for example, due to insolvency, futile. During the duration of the dispute the statute of limitation of warranty claims by the Contractual Party against Intramotion is suspended.

(7) The warranty is void if the Contractual Party changes, without the consent of Intramotion, the delivered item, or has it changed by a third party and the defect remedy is made impossible or unreasonable difficult. In any case, the Contractual Party has to bear the additional costs resulting from the defect remedy.

(8) Used goods, supplied as agreed between the Contractual Party and Intramotion in individual cases, are supplied without any warranty for defects.

## **§ 7 Intellectual property and commercial patents**

(1) Pursuant to § 7 hereunder, Intramotion warrants that the delivered item is free of intellectual property or commercial property rights of third parties. Each contracting party shall notify the other party promptly in writing if any claims of infringement of such rights are asserted.

(2) In the event that the delivered item infringes on intellectual property or commercial property rights of a third party, Intramotion will, at its discretion and at its own expense, amend and or exchange the delivered item in such a way that rights of third parties are no longer infringed upon, at the same time the amended or exchanged item being able to meet the contractually agreed functions, or grant to the Contractual Party the right to use by

concluding a license agreement. Should Intramotion fail to achieve this within a reasonable time, the Contractual Party is, after setting a reasonable deadline, entitled to rescind the contract or reduce the purchase price reasonably. Any damage claims of the Contractual Party are subject to the restrictions of § 8 of these General Terms and Conditions.

(3) In the case of rights infringements resulting from goods supplied by Intramotion, Intramotion has, at its discretion, the option to either assert the claims against the manufacturers and suppliers at the Contractual Partner's expense or assign them to the client. Claims against Intramotion are valid in accordance with § 7 hereunder only if the legal enforcement of the aforementioned claims against the manufacturers and suppliers was unsuccessful or, for example, due to insolvency, futile.

### **§ 8 Liability for damages due to negligence**

(1) The liability of Intramotion for damages, regardless of the legal grounds, especially for impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties in contract negotiations and tort, as far as negligence is involved, is limited in accordance with § 8 hereunder.

(2) Intramotion is not liable for slight negligence of its institutions, legal representatives, employees or other agents unless a breach of contractual obligations is involved. Essential contractual obligations are the obligation of timely delivery and installation of the goods free of material defects, as well as consulting, protection and care obligations that are to allow the client the contractual use of the goods delivered or to safeguard the protection of life and limb of personnel of the Contractual Party or the protection of its property from significant damage.

(3) To the extent that Intramotion is liable for compensation in accordance with § 8 (2), this liability is limited to damages that Intramotion has foreseen at the conclusion of the contract as a possible consequence of a breach of contract or that Intramotion in applying due diligence should have foreseen. Indirect or consequential damages that result from defects in the delivered item are furthermore only eligible for compensation as long as such damage can typically be expected during proper use of the delivered items.

(4) The Intramotion Systems GmbH is covered by business liability insurance and product liability insurance with an amount insured of 2 million euros for personal damage, property damage, and pecuniary damage per damage incident and per insurance year. In case of liability due to slight negligence, the liability of Intramotion regarding property damage and the ensuing additional financial damage is limited to the amount insured, even in the case when contract-relevant obligations are breached.

(5) The above exclusions and limitations apply to the same extent to the benefit of the institutions, legal representatives, employees and other agents of Intramotion.

(6) Any technical information or consulting work by Intramotion which are not part of the contractually agreed performance, is done free of charge and without any liability.

(7) The limitations of § 8 hereunder shall not apply to the liability of Intramotion as a result of intentional or grossly negligent conduct, regarding warranted performance parameter, or due to injury to life, limb or health or under the

Product Liability Act.

(8) Intramotion has calculated its prices and service charges, taking into account the liability limitations set forth in § 8 hereunder.

## § 9 Retention of title

(1) The delivered goods (goods with retained ownership) shall remain the property of the Intramotion, until all claims are met, which Intramotion has against the Contractual Party now or in the future, specifically including all balances due from current account. Provided the Contractual Partner's conduct violates the contractual terms hereunder - especially when he is in default regarding a due payment - Intramotion has the right to repossess the goods with retained ownership after Intramotion has set a reasonable time for such due performance. The costs incurred for the return transport shall be borne by the client. Any repossession of such goods on the part of Intramotion shall be construed as a cancellation of the contract. Any attachment of goods by Intramotion shall also be construed as a cancellation of the contract. Any repossessed goods with retained ownership can be liquidated by Intramotion. The proceeds from such liquidation shall be deducted from those due amounts which the Contractual Party owes after Intramotion has deducted a reasonable amount for the cost of liquidation.

(2) The Contractual Party shall treat the goods with care. He must at his own expense insure them sufficiently against fire, water and theft insurance at replacement value. If maintenance and inspection work is required, the Contractual Party shall perform it at his own expense in a timely manner.

(3) The Contractual Party may use the goods with retained ownership and sell them in the ordinary course of business, provided he is not in payment default. He may not pledge such goods by way of collateral or pledge. Any payment claims by the Contractual Party to his customers from the resale of such retained ownership goods as well as those claims of the Contractual Party with respect to those retained ownership items, arising from any other legal reason against its customers or third parties (in particular claims in tort and claims for insurance benefits) and in particular, including all balance claims from current account, is assigned by the Contractual Party to Intramotion by way of security to their full extent. Intramotion accepts this assignment. The Contractual Party may collect these claims assigned to Intramotion on his account in his own name for Intramotion as long as Intramotion does not revoke this authorization. The right of Intramotion to collect these claims itself will not be affected, although Intramotion will not pursue the claims itself as long as the Contractual Party meets his payment obligations as required. If the Contractual Party acts in breach of the contract hereunder - especially when he is in default regarding any due payment – Intramotion can require the Contractual Party to inform Intramotion of the assigned claims and the respective debtors, to inform the respective debtors of the assignment and to hand over to Intramotion all documents and information which Intramotion requires to assert such claims.

(4) Any processing or transformation of the ownership-retained goods by the Contractual Party is always performed for Intramotion. If the ownership-retained goods are processed with other goods that do not belong Intramotion, Intramotion acquires ownership of the new item in proportion to the value of the ownership-retained goods (final

invoice amount including VAT) to the other processed goods at the time of processing. Furthermore, the new item created by processing is subject to the same clauses as for ownership-retained goods. If the ownership-retained goods are combined or mixed separably with goods that do not belong to Intramotion, Intramotion shall acquire ownership of the new good in proportion of the value of the goods (final invoice amount including VAT) to the other combined or mixed goods at the time of joining or mixing. If the ownership-retained goods are combined or mixed in such a way that the goods of the Contractual Party shall be deemed as the main part, the Contractual Party and Intramotion are already at this time in agreement that the Contractual Party assigns to Intramotion proportional co-ownership in this item. Intramotion accepts this assignment. For the benefit of Intramotion, the Contractual Party shall keep safe any such item with sole ownership or co-ownership of Intramotion.

(5) In case of seizure of the ownership-retained goods by third parties or encroachment by third parties, the Contractual Party shall point out the ownership of Intramotion and shall notify Intramotion immediately in writing so that Intramotion can enforce its property rights. If the third party is unable to reimburse Intramotion the judicial or extrajudicial expenditures and fees arising in this context, the Contractual Party is liable accordingly.

(6) If the Contractual Party so requires, Intramotion is obligated to release the collateral Intramotion is entitled to, to the extent that its realizable value exceeds the value of Intramotion's outstanding claims against the Contractual Party by more than 10%. Intramotion may however select the collateral to be released.

## § 10 Final Provisions

(1) The place of jurisdiction for any disputes arising from the business relationships between Intramotion and the Contractual Party is by Intramotion's discretion either Bielefeld, or the place of business of the Contractual Partner. For law suits against Intramotion, Bielefeld, shall be the exclusive jurisdiction. Mandatory statutory provisions on exclusive jurisdiction remain unaffected by this provision.

(2) The relationships between Intramotion and the Contractual Party are exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

(3) If the contract or these General Terms and Conditions are found to be incomplete, provisions to achieve completeness are deemed to be legally binding, if, based on the commercial objectives of the contract and the purpose of the General Terms and Conditions, such provisions would have been concluded by Intramotion and the Contractual Partner, if they had known about the omission.

### Note:

The Contractual Party is cognizant of the fact that Intramotion stores data from the contractual relationship pursuant to § 28 Federal Data Protection Act for the purpose of data processing, and reserves the right to communicate such data to third parties (e.g. to insurance companies) as necessary for the performance of the contract.