Terms and Conditions of Use

"Verbotics Weld" and related software (the "Software") is provided on the terms and conditions set out below by **RoboMotion Pty Limited trading as Verbotics**, a company incorporated in New South Wales (ACN 618 027 222), whose registered office is at iAccelerate (239), Innovation Campus, Squires Way, North Wollongong, NSW, 2500, Australia (**"Verbotics"**).

1 **LICENSE, SUPPORT, AND SERVICES**

License

1.1   Verbotics shall grant the Licensee, a Commercial Licence upon the payment of the Licence Fee.

1.2   Verbotics shall grant the Licensee a Trial Licence upon successful registration by the Licensee with Verbotics.

1.3   Commercial Licences expire 12 months from the date of activation unless otherwise agreed.

Commercial License Terms

1.4   Payment of one Licence Fee is for one Commercial Licence only, being the use of the Software in relation to a single identifiable robot on the terms and condition set out in clauses 1.5 to 1.7 below.

1.5   The Licensee shall, as a condition precedent to the activation and of the Software under a Commercial Licence, provide Verbotics with verifiable proof of the serial number or other unique identifier of the robot in relation to which the Software is to be used, and Verbotics may at any time during the term of a Commercial Licence request re-verification of the serial number or other unique identifier of the robot.

Setup

1.6   Verbotics shall provide training to assist the Licensee to set up the Software for use with the Licensee's robot and systems as set out in the Proposal, for the fee set out in the Proposal.

Support

1.7   Verbotics shall provide the support packages set out in the Proposal, for the fees set out in the Proposal.

Restrictive Covenants

1.8   Other than as expressly permitted under this Agreement or other agreement with Verbotics, the Licensee shall not, during the Term or thereafter:

1.8.1   use the Software other than as expressly permitted under this Agreement;

1.8.2   copy, modify, duplicate, create a derivative work, adapt or republish all the Software or a significant or substantial part of the Software;

1.8.3   sell, lease, rent, license or otherwise make available for use the Software to any third party;

1.8.4   provide services using the Software to third parties, including by way of a bureau service; and/or

1.8.5   reverse engineer, reverse compile or disassemble the Software, generally, or with the intention of creating software the same as or similar to the Software.

1.9   The Licensee shall not authorize, permit, aid or abet, assist or otherwise allow or purport to allow, any Third Party to do any of the acts set out in clauses 1.8.

License Fees

1.10   Verbotics reserves the right not to provide the Software or activate the Software under a Commercial Licence until such time as the Licence Fee plus any applicable GST or other taxes have been paid to, and received in full by, Verbotics.

1.11   Verbotics reserves the right to suspend the use of the Software under a Commercial Licence by the Licensee until such time as the Licence Fee has been received in full and any fees relating to set up costs or support packages have been received.

1.12   Unless otherwise agreed in writing, the Licence Fee is payable in Australian dollars only.

1.13   All fees charged under this Agreement are exclusive of GST and any other taxes, which shall, where applicable, be added to the amount payable by the Licensee to Verbotics and shall become due and payable with the fees to which they relate.

Data

1.14   The Licensee hereby agrees to provide Verbotics with any and all Data that the Licensee generates, collects and creates relating to the Software and the License's use, testing and assessment of the Software.

1.15   The Licensee will provide the Data to Verbotics as soon as practicable, but in any event it shall provide the Data to Verbotics on a continuous basis such that Verbotics holds all of the Data that the Licensee holds in relation to the Software and its use, testing and assessment by the Licensee.

2   **INTELLECTUAL PROPERTY RIGHTS**

2.1   The Licensee acknowledges, understands and agrees that Verbotics and/or its licensors are the owners and/or controllers of Intellectual Property Rights in the Software.

2.2   In the event that any Intellectual Property Rights in the Software are or become vested in the Licensee as a result of or pursuant to this Agreement or otherwise, the Licensee agrees to do any reasonable act and execute any reasonable document transferring the ownership thereof to Verbotics or its licensor(s).

2.3   Any and all Improvements created by or on behalf of the Licensee in relation to the Software, and the use, testing and assessment of the Software, shall vest in and be the property of Verbotics and the Licensee agrees to do any reasonable act and execute any reasonable document transferring the possession and/or ownership thereof to Verbotics or its licensor(s), and Verbotics shall grant to the Licensee the right and licence to use the Improvements on the same terms as the Licence in clause 1.

3   **CONFIDENTIALITY**

3.1   The Parties agree that this clause 3 shall apply to any and all Confidential Information disclosed by one Party to the other Party and shall be in addition to any earlier confidentiality arrangements or Agreements between the Parties, provided that, in the event of any inconsistency, the terms of this clause 3 shall prevail.

3.2   Subject to this clause 3 and this Agreement, each Party shall keep the Confidential Information of the other Party, strictly confidential, and shall not disclose such Confidential Information, directly or indirectly, to any third party for any purpose whatsoever.

3.3   Each Party shall employ the same degree of care and diligence in the protection of the Confidential Information of the other Party, and the preservation of its confidentiality, as it employs in relation to its own Confidential Information, and in any event, shall use its best endeavours to safeguard the other Party's Confidential Information against unauthorised use and disclosure.

3.4   Neither Party shall use, or permit any use of, any Information disclosed to it under this Agreement by the other Party for any purpose other than the performance of its obligations and the enjoyment of its rights, as set out in this Agreement.

3.5   The confidentiality and non-use obligations set forth in this clause 3 in relation to Confidential Information shall not apply to any information:

3.5.1   which, at the time of its disclosure, is in the public domain;

3.5.2   which, after its disclosure, becomes part of the public domain otherwise than through a breach of this clause 3, or other non-compliance with any provision of this Agreement;

3.5.3   which was known to the receiving Party prior to receipt from the disclosing Party, provided that, such prior knowledge can be adequately sustained by documentary evidence predating the disclosure;

3.5.4   which is disclosed to a Party by a Third Party which, in making such a disclosure, is not in violation of any obligations of confidentiality; or

3.5.5   which is disclosed when such disclosure is compelled pursuant to legal, judicial, or administrative proceeding, or otherwise required by law, but only to the extent and for the purpose of such order or compelled disclosure and subject to giving as much prior notice as possible to the disclosing Party to allow it to seek protective or other orders.

3.6   A Party shall immediately report to the other Party any breach or suspected breach of its obligations under this clause 3.

4   TERM AND TERMINATION

4.1   Unless terminated in accordance with this clause 4, this Agreement shall commence on the date on which the Software was activated and terminate 12 months later.

4.2   Either Party may terminate this Agreement in the event that the other Party is in material breach or if the other Party is the subject of an Insolvency Event.

4.3   Any of the following shall be an **"Insolvency Event"** in relation to a Party:

4.3.1   bankruptcy, a voluntary arrangement, or any other composition or arrangement with its creditors;

4.3.2   upon the appointment of a receiver, manager, trustee or other officer being appointed by any person over all or a substantial part of the other Party's property or assets;

4.3.3   the passing of a resolution for the other Party's winding up (other than for the purpose of and followed by a solvent reconstruction or amalgamation); or

4.3.4   upon the other Party having a petition for a winding up presented against it.

4.4   Upon expiry or termination of this Agreement, the licence granted under clause 1 shall cease and the Licensee shall cease any and all use of the Software.

4.5   Upon expiry or termination of this Agreement, any and all Confidential Information disclosed by one Party to the other Party shall be:

4.5.1   returned to the disclosing Party; and/or

4.5.2   at the direction of the disclosing Party, destroyed by the receiving Party.

5   WARRANTIES AND LIABILITY

5.1   Verbotics makes no representations, undertakings, warranties, guarantees or indemnities in relation to the Software and, as such, to the fullest extent permitted at law, excludes any and all liability in relation to the Software, the Licensee's use of the Software, its fitness for a particular purpose or any purpose, or that its use will not contravene the rights of any third party (including Intellectual Property Rights thereof).

5.2   Neither Party shall be liable to the other Party for any:

5.2.1   indirect loss;

5.2.2   consequential loss;

5.2.3   loss of business;

5.2.4   loss of profits; or

5.2.5   for any loss that is not reasonably foreseeable,

whether arising in contract, tort (including for negligence, misrepresentation or breach of statutory duty) or as a result of any breach of this Agreement.

5.3   Verbotics' total aggregate liability under this Agreement shall not exceed AUD$5,000.00.

6   MISCELLANEOUS

6.1   The following clauses will survive the expiry or termination of this Agreement and continue to have legal and binding effect: Clauses 1.8, 1.9, 2, 3, 4, 5, 6.1, 6.5, 6.6, 6.8 and 7.

6.2   The failure of a Party to insist upon performance or strict performance of any provision of this Agreement, or to exercise any right or remedy to which it is entitled under this Agreement, shall not constitute a waiver of the other Party's failure to perform or under-performance, and shall not diminish the other Party's obligation to fully perform its obligations under this Agreement.

6.3   A waiver of a breach of this Agreement shall not be effective unless and until:

6.3.1   it is expressly stated to be a waiver;

6.3.2   it specifies the breach to which it relates; and

6.3.3   it has been committed to writing and signed by a duly authorised representative of each Party that has the power to bind their respective Parties in relation to such matters.

6.4   A waiver of a breach of this Agreement shall not constitute a waiver of any subsequent breaches of this Agreement.

6.5   Neither Party has entered into or continued with this Agreement in reliance of any promises, representations or undertakings made by the other Party, other than those set out in this Agreement.

6.6   Unless otherwise specified in this Agreement, no change, alteration or amendment of this Agreement shall bind either Party unless made in writing bearing the signature of a duly authorized representative of each Party.

6.7   If any provisions of this Agreement should become fully or partially invalid or unenforceable for any reason whatsoever, or violate any applicable law, such provisions shall be deleted from this Agreement, and the remainder of this Agreement, to the extent permissible, shall be valid and binding as if such provision(s) were not included herein.

6.8   This Agreement shall be governed by the laws of New South Wales and the exclusive jurisdiction of the New South Wales courts.

7   DEFINITIONS

In this Agreement, the following words and phrases that have their first letter(s) capitalized have the meaning ascribed to them below:

"Agreement" means these "Terms and Conditions";

"Confidential Information" means all information, knowledge or data (including Data) provided by one Party to the other Party relating to this Agreement and the subject matter thereof, whether in physical or electronic form, or pursuant to visits to the premises of the other Party, which:

   a)   if disclosed in writing, is marked as "confidential" or "proprietary";
   b)   if disclosed orally, is summarized in writing by the receiving party and sent to the disclosing party within ten (10) days of the initial disclosure; or
   c)   given the nature of the information or the circumstances surrounding its disclosure should reasonably be considered as confidential,

"Commercial Licence" means a non-exclusive, non-transferable, non-sub-licensable, revocable, non-perpetual licence to use the Software to control the operation of a welding robot in a real-world (non-virtual) environment;

"Data" means any and all information, knowledge and data relating to the use, testing and assessment of the Software conducted by a Licensee;

"Intellectual Property Rights" means: patents, registered designs and copyright (including rights in software) (and any applications for any of the foregoing), design rights, database rights, semi-conductor topography rights or rights in mask works and rights in know how, and any other similar rights existing now or in the future anywhere in the world;

"Licence Fee" means the licence fee payable to Verbotics for a Commercial Licence as set out in a Proposal which will, unless otherwise indicated in the Proposal, be on a per robot basis;

"Licensee" means:

a) in the case of a Commercial Licence - the person, company, entity or organisation that paid the Licence Fee or had the Licence Fee paid on its behalf and which intends to use and uses the Software in its robotic welding processes; or

b) in the case of a Trial Licence - the person, company, entity or organisation that registered with the Verbotics to test and evaluate the Software in a virtual simulation environment;

Proposal means a proposal by Verbotics prepared for the Licensee for a Commercial Licence setting out:

a) the Licence Fee;

b) the setup details - if it is the Licensee's first use of the Software on a particular robot - and costs;

c) the support details and costs;

"Software" means the Verbotics software for automatically programming welding robots;

"Trial Licence" non-exclusive, royalty free, non-transferable, non-sub-licensable, revocable, non-perpetual licence to use the Software for testing and evaluation purposes in a virtual simulation environment.