

**IMPORTANT – PLEASE READ CAREFULLY:**

**BY RECEIVING PRODUCTS OR SERVICES FROM NAVVIS, YOU AGREE TO BE LEGALLY BOUND BY THE PROVISIONS OF THESE GTC.**

**IF YOU DO NOT UNDERSTAND THE TERMS AND CONDITIONS HEREIN OR IF YOU WISH TO ENGAGE NAVVIS PRODUCTS OR SERVICES IN PERSONAL OR FAMILIAL USAGE, PLEASE REFRAIN FROM ENTERING INTO THESE GTC AND/OR USING ANY NAVVIS PRODUCT OR SERVICE. NAVVIS MAY REQUEST PROOF OF ESTABLISHMENT TO ENSURE THESE GTC ARE NOT ENTERED INTO WITH A CONSUMER.**

**NAVVIS IS ONLY WILLING TO PROVIDE PRODUCTS OR SERVICES UNDER THE TERMS OF THESE GTC AVAILABLE AT [http://www.navvis.com/documents/GTCD\\_v1\\_6.pdf](http://www.navvis.com/documents/GTCD_v1_6.pdf). IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THESE GTC, PLEASE IMMEDIATELY CEASE AND REFRAIN FROM ACCESSING OR USING ANY NAVVIS PRODUCT OR SERVICE AND DELETE ANY COPIES.**

For any questions regarding these GTC, please contact Your NavVis Account Manager or write to: NavVis GmbH, Legal Department, Blütenburgstraße 18, 80636 Munich, Germany.

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These GTC shall become the contractual basis for the provision of any service or product, including hardware and/or software, by NavVis GmbH at Blumenburgstr. 18, D-80636 Munich, Germany ("**NavVis**") to a legal entity effectively established under the applicable laws ("**Customer**") and shall become effective on the date NavVis accepts Customer's binding declaration as detailed in Section II. 2 (Conclusion of Contract).

**Whereas**, NavVis provides products and services and Customer wishes to obtain such products and/or services, the following is agreed:

## I. DEFINITIONS

The following definitions shall apply unless otherwise defined in the main body of these GTC. In addition, the definitions in the EULA shall apply in respect of any capitalized terms used in these GTC that are defined in the EULA and not otherwise defined in these GTC.

1. "**Affiliate**" means an entity controlled by, controlling, or under common control with a party to these GTC. Control exists through ownership, directly or indirectly, of a majority of the outstanding equity capital and of the voting interests of the subject entity. If an entity ceases to meet these criteria, it will cease to be an Affiliate under these GTC. NavVis Affiliates are the entities defined in Section I. Nr. 10, which are not entering into these GTC as contractual party per the respective Quotation.
2. "**EULA**" means the separately documented NavVis End User License Agreement for Software effective at the time of Quotation for the Software.
3. "**Data**" means electronic data produced by the Hardware and Software and stored as part of the NavVis Product or NavVis Service. This includes but is not limited to geodata, photos, point clouds or cloud maps of scanned indoor space. It is not intended that Data includes personal data.
4. "**Documentation**" means written information in English (whether contained in user or technical manuals, training material, specifications or otherwise) pertaining to the Software and/or Hardware and/or Services made available by NavVis or its authorized partners in any manner (including on USB, hard drive, or via online access).
5. "**Fee**" means any fee payable to NavVis (e.g. for Hardware purchase and/or subscription; for perpetual and/or term license for Software; Services fee, support fee or any other fee agreed).
6. "**Hardware**" or "**NavVis Hardware**" means the IMMS and any other physical product by NavVis with or without NavVis System Software.
7. "**IMMS**" means the NavVis indoor mobile mapping system, a SLAM based mobile device equipped with laser scanners and cameras and embedded Software to capture a 360°-point cloud immersive imagery of its surrounding.
8. "**Indoor Navigation**" means calculation and visualization of a route to get from one place to another inside enclosed buildings.
9. "**Indoor Positioning**" means identification of the position inside enclosed buildings.
10. "**NavVis**" means one of the following entities, depending on whichever entity is entering into this EULA as contractual party as per the respective Quotation: NavVis GmbH, a company formed under German law having its principal place of business at Blumenburgstr. 18, D-80636 Munich, Germany; or NavVis US, Inc., a company formed under US law having its principle place of business at 433 Broadway, Suite 410, New York NY 10013, USA; or NavVis Information Technology (Shanghai) Co. Ltd., a company formed under Chinese law having its principle place of business at Unit 1006, Donghai Soho, 299 Tongren Rd. Jingan District, 200040 Shanghai, People's Republic of China; or NavVis UK Ltd, 170 Edmund Street, Birmingham B3 2HB, United Kingdom.
11. "**NavVis Instance Management System**" a cloud-based Software used to manage deployment of instances by the Customers in the SaaS
12. "**NavVis Product**" or "**Product**" means one of NavVis' proprietary Hardware and Software products including the related marketing materials, Documentation, contractual documents by NavVis such as these GTC or the EULA, and other supplemental materials.
13. "**NavVis Service**" or "**Service**" means services to be performed by NavVis' staff and/or subcontractors.
14. "**Processing Task**" means the technical processing task initiated by the Customer in the Software-as-a-Service to process the Data
15. "**Software**" or "**NavVis Software**" means any software, firmware, and any associated Documentation made available by NavVis under this agreement, which includes the associated media and NavVis internet-based services, including but not limited to the software embedded or installed and running on the Hardware, the software to process the recorded data, the browser-based software to visualize the processed data and the software for Indoor Positioning and Indoor Navigation, regardless whether provided as licensed software or as Software-as-a-Service.
16. "**Software-as-a-Service**" means the provision of a non-exclusive service on a temporary basis that grants access to use the Software while the Software and Data are centrally hosted without granting any other rights to use or exploit the Software (herein or in any other document).
17. "**User Generated Content**" means any information entered in, uploaded to or in any other way generated by User and stored, uploaded, implemented, or installed into NavVis Software.

18. For the purposes of these GTC, **"in writing"** requires signature of an authorized representative of both contracting parties on the same document or on identical copies (e-mail is not sufficient, but a scan of a signed document or electronic execution of a respective document via DocuSign or equivalent applications shall be sufficient).

## II. GENERAL PROVISIONS

### 1. APPLICATION, AMENDMENT

- a) These GTC shall apply exclusively for the provision of Products and Services by NavVis to Customer. Conflicting or supplementing general terms and conditions of business of Customer shall not become an integral part of the contract, irrespective of whether such terms have been notified in the context of conclusion of the contract or after, and irrespective of whether such terms have been the subject of separate objection.
- b) NavVis may amend provisions of the applicable GTC, including but not limited to, amendment and adaptation of the Services and processes related thereto. NavVis will inform Customer about such amendment with one (1) month's advance notice prior to the amendment's effective date. Such amendment shall be made solely if NavVis deems them useful or necessary in its reasonable discretion, e.g. in cases of new technical developments, changes to case law, reference errors or other similar reasons. The amendments shall be deemed approved and binding for an existing contractual relationship with their entry into force if Customer does not reject within one (1) month of the receipt of the notice. Customer agrees not to reject such amendments without reasonable grounds whereas rejection shall be made in writing. **Please note that hereby Customer's silence will be deemed acceptance.** Customer will be informed of this consequence in the notice. If an amendment is rejected, the parties shall enter negotiations about such amendment in good faith.

### 2. CONCLUSION OF CONTRACT, ORDERING PROCESS

- a) A contract between NavVis and Customer based on these GTC can only be concluded in English unless otherwise explicitly agreed. These GTC are available online (see link on page 1) and Customer is advised to archive the version of these GTC and any other additional agreement applicable for the respective contract for its own purposes. As an exception and upon request following conclusion of the contract, NavVis may send to Customer the applicable GTC and any additional agreement but is not obliged to do so.
- b) **Order.** NavVis will provide Customer with a quotation for requested Products and Services ("**Quotation**"). A Quotation by NavVis shall not be considered a binding contract offer. After NavVis provides Customer with a Quotation, Customer shall submit a purchase order ("**Order**") constituting a binding declaration that it wishes to acquire the Products and Services as stated in the Quotation. Such Order shall be issued by signing the Quotation at the designated section or via an Order with reference to the Quotation (electronic forwarding of signed quotation as PDF scan will be considered valid by NavVis). NavVis' acceptance of such Order is required to constitute a binding contract. For the sake of clarity, version of these GTC effective as of the date of Quotation shall be the contractual basis unless otherwise expressly agreed.
- c) **Acceptance.** NavVis shall accept the Order within thirty (30) business days of receipt of the Order by issuing a formal order confirmation or an invoice or by (partial) Delivery (as defined in Section II. 6.b. below) of Products and/or Services ordered. If an Order is not confirmed within this period, it shall be deemed rejected. An order confirmation may contain binding and prevailing information on the nature and scope of the delivery, and provide an order number, and in lack of such, the details in the respective Quotation shall apply, including the reference to GTC and/or EULA or any other terms and conditions as applicable. Information or explanation provided by telephone or verbally by representatives of NavVis shall only be legally binding if confirmed in writing. Additional documents for information, such as illustrations, drawings, details of weight and dimensions, are merely approximate information by way of example, and will not be binding, unless expressly declared as binding in the Quotation or order confirmation.
- d) Customer acknowledges and agrees that NavVis' Affiliates may perform on behalf of and in benefit of NavVis subject to these GTC and all terms and conditions agreed between Customer and NavVis.

### 3. SCOPE OF PRODUCTS AND SERVICES

- a) NavVis offers a range of Products and Services which Customer can procure individually or as bundle packages. Customer will find the details of the Products and Services offered to Customer in the respective Quotation. Due to constant improvement and product development, NavVis reserves the right to deliver NavVis Products with minor changes (such as, but not limited to, of the outward appearance or the IP rating) which do not negatively affect the overall performance of the Product (as reasonably assessed by NavVis). **For any Software (including Software embedded in a Hardware), the terms and conditions of the EULA apply in addition to these GTC.**

- b) Customer must access and use Products and Services exclusively in accordance with the applicable GTC and EULA, applicable Documentation as well as any instructions provided by NavVis. NavVis shall not be liable for any failures or defects in the use of any Products or Services, or any other damage, injury or fault, arising out of instructions provided by a third party to Customer.
- c) Customer must not resell or otherwise transfer ownership rights or rights of use granted in accordance with these GTC concerning NavVis Products and Services to any third party without prior consent from NavVis in writing, which may not be unreasonably withheld.
- d) **No work services (*Werkleistung*).** NavVis' Services include, but are not limited to, consulting services and support services. Unless otherwise agreed by the parties, NavVis provides the services as a pure service in support of Customer and does not provide any work services with resulting in deliverables that may be subject to acceptance by Customer. If Customer is of the opinion that the services' description by NavVis provides for such work services, Customer shall contact NavVis for further clarification. NavVis hereby expressly disclaims any warranty or liability for its services.
- e) **Data.** NavVis Hardware and Software, amongst other functionality, create Data. NavVis or its Affiliates may also create Data in course of providing Services.
  - i. NavVis as author of the Data hereby grants to Customer the exclusive rights of use for all Data which is produced, created, and generated by NavVis or as a result of the use of NavVis' Hardware and Software, provided NavVis and its Affiliates maintain the exclusive right to use and modify the Data for Indoor Positioning and Indoor Navigation solutions. In this respect Customer is permitted to use the Data for providing Indoor Positioning and Indoor Navigation solely by using NavVis Software; no third-party positioning or navigation software or system may be used. No further rights are granted or assigned to Customer in respect of the Data unless otherwise expressly agreed in writing by the parties.
  - ii. NavVis' Software or Service may enable the User to upload, store and manipulate User Generated Content. Customer represents and warrants to NavVis and NavVis' Affiliates that it is the legal owner and/or lawful licensee of all rights, title, interest and/or required consents in and to such User Generated Content uploaded, stored, or manipulated by Customer, in respect of such uploading, storage and/or manipulation of User Generated Content by the NavVis' Software or Services. Except as and to the extent set out expressly in the EULA and/or these GTC, NavVis acquires no right, title or interest from Customer or the User to such User Generated Content uploaded, stored, or manipulated by Customer or User under these GTC in or to User Generated Content. However, to the extent as permitted by applicable laws, Customer hereby grants to NavVis and its Affiliates (and shall ensure that Users grant to NavVis and its Affiliates) a right to process, analyze, backup, etc. uploaded, stored, or manipulated User Generated Content in order to fulfill its contractual obligations, as well as to improve NavVis or NavVis Affiliates' Products and Services.
  - iii. NavVis or its Affiliates may collect and utilize technical information gathered as part of the Service to improve NavVis Products and/or to provide customized services to its customers. Such data will not be disclosed or disseminated to third parties except in an anonymized form and will be collected and processed in accordance with applicable data protection laws and regulations.

#### 4. PRICES, PAYMENT

- a) The prices agreed between the parties as stated in the NavVis order confirmation or invoice shall apply. All payments are payable in the currency specified in the invoice.
- b) Unless otherwise stated in the Quotation, order confirmation or invoice, the prices exclude (i) customs charges, freight, handling, transport-insurance costs, or similar costs, which shall be invoiced separately, and (ii) applicable taxes such as value added tax, sales tax and tax at source or withholding tax which may be levied on the prices or costs. Unless otherwise determined by applicable mandatory law, Customer shall pay all taxes and charges related to Products or Services and provide a payment confirmation (e.g. copy of bank transaction, confirmatory note, etc.) to NavVis, or shall present a corresponding exemption certificate that is acceptable to all tax authorities. Where practical, applicable taxes shall be included as separate items on the invoice. Customer is responsible for full payment as invoiced and all costs of bank transfer.
- c) Unless otherwise agreed, invoices must be settled within fourteen (14) days of the date of the invoice via bank transfer as indicated in the invoice.
- d) Any sum not paid by Customer when due shall bear interest from the due date to the date of full payment, without prejudice to any other rights and remedies of NavVis, such interest to run day to day and after as well as before any judgment at a rate of (i) ten per cent (10%) per annum or (ii) the maximum rate permitted by law, whichever is less. NavVis retains the right to add additional costs incurred (e.g. internal or external administration) during the dunning process.
- e) In the event of late payment or any other breach of these GTC by Customer, NavVis may, at its sole discretion, and without prejudice to its other rights and remedies, withhold delivery (including partial delivery) of any order or Products, require Customer to prepay for further orders and shipments, and/or suspend or withhold the provision of Services (including the provision of Software as SaaS) without further notice, until payment in full of all outstanding invoices, late payments and interest has been received by NavVis.

- f) **Excess use.** NavVis may invoice Customer fees and taxes at the then current standard price for use of or access to the Products and Services in excess of the number or type procured and granted by NavVis.
- g) As an exception, NavVis may waive full advance payment and thus assume a credit risk (e.g. in the event of subscription or low-down payment against a purchase etc.). In this case, before confirming Customer's Order, NavVis shall have the right to obtain a credit reference or commission a creditworthiness check with a renowned institute. For the purpose of the creditworthiness check - and only in so far as legally admissible - NavVis can obtain a credit reference – in Germany from Creditreform Boniversum GmbH (Hellersbergstrasse 11, D-41460 Neuss) as well as from SCHUFA Holding AG (Kormoranweg 5, D-65201 Wiesbaden), in Austria from Deltavista GmbH (Diefenbachgasse 35, A-1150 Vienna). Customer agrees that NavVis may forward Customer's personal data required for a creditworthiness check, to the above credit agencies and shall use the information received for a balanced decision on the creation and execution of the contractual relationship. The credit reference can include probability values (scoring values), calculated on the basis of scientifically recognized mathematical-statistical methods and using address data among other things. The interests of Customer warranting protection will be taken into account in accordance with the statutory provisions.
- h) Fees paid for NavVis Products, even in case of a down payment, are non-refundable except as provided in these GTC.
- i) Customer's rights of offsetting and retention (if any) is excluded except for any undisputed claim or claim established by final judgment or as otherwise required by law.

## 5. REGULATIONS, IMPORTER OF RECORD

- a) NavVis Products may be subject to statutory provisions and regulations including export or import regulations. Customer must comply with all provisions and regulations related to the delivery or use of the Products. These provisions and regulations may include restrictions in terms of place of destination, user and purpose of use.
- b) Customer shall be the importer of record ("**IOR**"). As IOR, Customer will comply strictly with all regulations and has the responsibility to obtain any permits, rights and licenses required to export, re-export, or import NavVis Product and Services and shall bear all associated costs and sole responsibility for obtaining all documents, certificates and notifications concerning the transport, import and export etc., e.g. customs clearance in the country of destination. For the avoidance of doubt, NavVis is not responsible for checking whether Customer is legally permitted to transport, import, and export. Upon Customer's request, NavVis will, to the extent reasonable and subject to reasonable remuneration, support Customer in obtaining all necessary certificates or other documents that may be required.

## 6. DELIVERY, TRANSFER OF RISK AND CANCELLATION

- a) Unless agreed otherwise, NavVis will organize shipping with a reliable service provider at reasonable cost (including appropriate insurance). Customer shall provide all necessary documents and statements required for shipping by statutory law (e.g. pro-forma invoice, import or export accompanying documentation etc.).
- b) NavVis shall retain title to the NavVis Product until the agreed price for the Product has been paid in full and the Product has been delivered, whereas "delivery" is considered to be handing the goods over to the carrier contracted or Customer directly, in accordance with the Incoterms agreed ("**Delivery**"). The Products subject to retention of title may neither be pledged to third parties nor assigned as security before full payment and delivery. NavVis must be informed immediately in writing (e-mail shall suffice), if an application for the opening of insolvency proceedings is filed, or if an access of third parties (e.g. distraint) on these Products is to take place.
- c) Unless otherwise agreed in writing, all risk of loss for the physical media will pass to Customer upon Delivery.
- d) All costs and charges actually incurred, including any costs and charges for shipping, re-shipping, return, storage, handling, and insurance, shall be borne by Customer, and may be invoiced separately. NavVis will bear all costs incurred and for which proof is provided by Customer in case such costs occur due to NavVis' liability for a defect; however, upon NavVis' request, Customer shall process payment with authorities and costs incurred will be subsequently reimbursed by NavVis.
- c) Upon Delivery, Customer is solely responsible for managing any data (e.g. deleting, transferring and creating backups) stored on the NavVis Products, including SSD card in the Hardware. Customer shall take reasonable precautions against the loss of data (e.g. regular back-up) before returning NavVis Products to NavVis for repair or for any other reason. NavVis will not be responsible for any data, software or material that is lost or reformatted. For Software back up, the provisions of the EULA shall apply.
- d) In any case of return of NavVis Products to NavVis premises or any other location, Customer shall be responsible for transportation according to the instructions provided by NavVis, including but not limited to NavVis guidelines and manuals provided. Customer shall provide for a handover protocol between Customer and transportation company before shipment to avoid dispute about damage (concerning obvious external damage in particular) occurred during transportation.
- e) NavVis does not make any warranty or guarantee as to shipping and delivery dates. Customer accepts that NavVis does not assume any liability whatsoever for any and all losses, damages or contractual penalties of Customer due to delays to the delivery of NavVis Products or to the provision of Services, or for any failure to notify such delays, unless NavVis acts intentionally or grossly negligently.

As a mere estimate, NavVis will inform Customer of the scheduled shipping and delivery dates as well as any subsequent deviations and foreseeable delays upon receipt of full payment or down payment agreed. Should Customer fail to process receipt of shipment or fail to comply with other obligations to cooperate, including making payment in due time, NavVis shall be entitled to assert damages, including higher expense. The right to additional claims remains reserved.

- f) Shipment date may be deferred upon Customer's request for up to thirty (30) calendar days from the original shipping date scheduled by NavVis, provided Customer places such request to [finance@navvis.com](mailto:finance@navvis.com) at least ten (10) calendar days' prior to original shipping date.
- g) **Cancellation.** If originally estimated shipping is delayed by more than twelve (12) weeks due to NavVis' responsibility, Customer shall be entitled to cancel its Order concerning the NavVis Product affected by the delay, and to demand reimbursement of the corresponding payment received by NavVis. If Customer can demonstrate that another NavVis Product or Service ordered in the same Order is affected and is of no use to Customer as a result of such cancellation (e.g. cancellation of the training for Hardware if the Hardware cannot be delivered), Customer shall also be entitled to cancel such associated NavVis Product or Service. Upon cancellation, Customer shall immediately discontinue use of the Product and Services, return Product to NavVis' premises at its own expense within five (5) business days, informing NavVis about details of return, and, except where required by law, delete any copies of Product or any related material in its possession and provide proof of deletion upon request. NavVis will issue reimbursement of payment via the payment method originally used by Customer within a reasonable time frame upon receipt of such return, and reimbursement of payment will be payment received less any shipping and handling fees incurred by NavVis, and less any amounts associated with any damage to the cancelled NavVis Product caused by Customer. **Customer shall have no other right to cancel any Order placed. All contracts concluded subject to these GTC are final unless otherwise provided by mandatory law.**

## 7. LIMITED WARRANTY

- a) **Warranty.** NavVis warrants that the Product at the time of first delivery will be free from defects as to quality and title.
  - i. NavVis will rectify the defect through elimination of the defect ("repair") or provision of a defect-free substitute at NavVis' choice and free of charge within an appropriate period. Customer may be required to send Product to NavVis' premises for repair. It is Customer's responsibility to backup any data, software, or other material it may have stored on Products before sending. NavVis will not be responsible for any data, software or material that is lost or reformatted.

To the extent reasonable for Customer and provided it does not considerably impair the agreed use, NavVis may rectify the defect by providing an update, upgrade or more recent version of the Product or a technical workaround by means of written or remote instructions and/or by way of corrective tool or software, in which event Customer is obliged to implement such instructions, to enable remote data transmission or remote access by NavVis as necessary.

If a defect cannot be rectified within a reasonable period, or if repair or delivery of a substitute can be deemed to have failed for other reasons, then Customer may demand a reduction of the Fee. Supplementary performance will not be deemed to have failed until NavVis has unjustifiably refused to rectify or has been given adequate opportunities to rectify the defect, taking into account the complexity of the matter and the circumstances, but at least three (3) opportunities. NavVis may refuse to rectify the defect and refer Customer to its right to rescind or terminate the contract if rectifying the defect is only possible for NavVis at unreasonable expenses.

Alternative to a reduction of the Fee, Customer may rescind the contract provided that the claimed defect is not immaterial. In case of rescission, NavVis will refund payment less compensation for use (limited use due to defect for which NavVis is liable) and deterioration.
  - ii. NavVis will at its sole discretion rectify defects in title by way of (A) obtaining for Customer a non-exclusive license to continue using the Product; (B) replacing the infringing portion to the extent reasonable for Customer in consideration of the agreed purpose of use; or (C) modifying the infringing portion without unreasonable degradation in functionality in order to make it non-infringing. In case rectification is not possible, NavVis will take back the infringing portion thereof and refund payment less compensation for use and deterioration.
- b) Customer shall give written notice of the defect to NavVis immediately after receipt of the Product, unless defect is not recognizable, and in this case, immediately after discovery. Customer has a duty to examine NavVis goods received immediately following receipt, and to check for defects. NavVis shall not be liable for defects which have not been communicated in accordance with the above requirements.

For the sake of clarity, transport damages which are not subject to warranty claim due to transfer of risk upon Delivery shall be communicated to NavVis in the same manner and NavVis will, to the extent reasonable, support Customer concerning possible insurance claims.
- c) Defects shall be documented by Customer in a manner comprehensible to NavVis (e.g. in the case of material defects by means of screenshots, pictures, error messages and defect records) and shall be reported in writing immediately after determination of any such defect. NavVis requires that all warranty claims are accompanied by a proof of purchase or subscription (sales receipt or order



confirmation), Customer name, contact information, and the serial number of Customer's NavVis Products to allow verification of the date of purchase or subscription and delivery. Where proof of purchase or subscription is not provided, NavVis reserves the right to classify the defect a non-warranty case and to charge a service fee and/or charge for parts replaced or repaired.

- d) **No warranty.** NavVis is not liable for any warranty or representation made by a reseller or any party other than NavVis. Notwithstanding other provisions of these GTC, NavVis' obligations for warranty for NavVis Products (Hardware and Software) directly purchased from NavVis shall be limited solely and exclusively to the warranties and obligations under this Section II. 7 (Limited Warranty). Batteries, rubber handles or packaging or transport cases of the NavVis Hardware are not considered as part of the Hardware, but rather as consumables, and warranty for these consumables is expressly excluded. NavVis offers to repair damaged packaging or transport case at Customer's cost and if Customer refuses such repair NavVis will take no liability for the Product and warranty is excluded. Unless otherwise agreed, for Products with damaged packaging or transport case, all risk of loss will pass to Customer at the shipping dock of NavVis shipping facility.
- NavVis does not provide any warranty for Services, unless otherwise expressly agreed in writing. Except as expressly provided herein or in an individual agreement signed by both parties, NavVis disclaims and Customer waives all representations, warranties, conditions or other terms (whether express, implied, or statutory), including in particular any warranty, condition, or term (i) of any implied warranties of merchantability, fitness for a particular purpose, reasonable care and skill, non-infringement, satisfactory quality, accuracy, or system integration, or (ii) arising from any course of dealing, course of performance, or usage in the industry. To the extent permitted by law, if a warranty, condition, or term cannot be disclaimed, such warranty, condition, or term shall be limited in duration to the applicable express warranty period.
- e) **Warranty exclusion.** The following errors are excluded from NavVis' warranty: (i) insignificant defects, including but not limited to errors that can be easily corrected (by workaround to the extent reasonable) and will not show up as a performance defect; (ii) defects that result from modification, alteration or enhancement by anyone other than NavVis itself in provision of maintenance and support services or as otherwise agreed (e.g. removing cover or seal on the Hardware is deemed modification); (iii) defects that result from Customer's use of an operating and/or installation environment, software, hardware, firmware, data, or technology not provided or approved in writing by NavVis; or (iv) from any telecommunications medium used by Customer.
- Further, the warranty does not cover claims (v) resulting from misuse, abnormal use, overloading, general wear and tear, poor maintenance, color fading, mold, fabric cuts and tears, tire punctures or corrosion to frames as a result of atmospheric or environmental conditions; (vi) any use in violation of these GTC, the applicable EULA, Documentation and instructions by NavVis, and (vii) resulting from use of a superseded version provided the infringement would have been avoided by the use of a then-current release for which Customer was eligible for.
- f) Customer is obliged to mitigate damages and loss. Customer is not authorized to rectify defects itself or have them rectified by any third party and claim reimbursement for expenses without prior confirmation from NavVis in writing.
- g) Claims based on material defects or defects of title become time-barred after twelve (12) months. Statute of limitation shall start with Delivery; warranty work performed by NavVis creates neither an extension of the warranty period nor does it start a new warranty period afresh. In the event of willful act or gross negligence of NavVis, in case of malicious concealment of a defect, physical injury, guarantees and claims in accordance with mandatory product liability laws, the statutory limitation periods apply.
- h) NavVis replacement parts used in Hardware may be new or refurbished. Due to some parts being discontinued and/or no longer available, replacement parts and Products may be subject to minor variations when compared to the replaced part. Replaced items shall become NavVis' property.
- i) The place of performance shall be at NavVis' premises unless otherwise agreed or determined by applicable mandatory law. NavVis reserves the right to invoice Customer in accordance with the respectively then current standard price for the service for (i) additional costs which arise as a result of a reallocation of the Product by Customer to a location other than the contractually agreed (installation) location, (ii) additional costs which arise as a result of Customer culpably failing to comply with its obligations to cooperate in accordance with these GTC or the applicable EULA, (iii) additional costs which are based on material defects in the Product which are asserted by Customer but do not exist, (iv) material defects in the Product which arise exclusively as a result of culpable faulty operation, and/or (v) additional costs based on non-observance of the applicable Documentation.
- j) This Section II. 7 (Limited Warranty) states NavVis' total obligation and the sole remedy available to Customer regarding any claims for defect.

## 8. SUPPORT SERVICE, NON-WARRANTY REPAIR

- a) NavVis offers support for its Products and Services to Customer as procured and indicated in the Quotation and in accordance with the then current support policy.
- b) Maintenance and support services for NavVis Products may be purchased for a specific term exclusively as detailed in the Quotation, order confirmation or invoice by NavVis. Maintenance and support services by NavVis are provided as pure services. Section II: 7 (Limited Warranty) does not apply for any maintenance or support Product or Services unless otherwise agreed in writing.

- c) For a defect for which NavVis is not liable in accordance with Section II. 7 (Limited Warranty) Customer may request a Quotation from NavVis. NavVis will, to the extent commercially reasonable and possible, provide a Quotation with an adequate price for such non-warranty issue.
- d) NavVis may, at its sole discretion, subcontract support services to a third party subject to the same level of confidentiality and data protection and will remain fully responsible towards Customer.

## 9. CONFIDENTIAL INFORMATION, NAMING AS REFERENCE CUSTOMER

- a) Information disclosed by NavVis under these GTC, the EULA and any other individual agreement shall be treated as confidential ("Confidential Information") and shall only be used for the purposes as agreed therein. The non-disclosure agreement entered between the parties shall hereby be incorporated into these GTC and apply to Confidential Information.
- b) NavVis reserves its right to ownership and the copyright to its images, drawings, manuals, related media, program descriptions and other documentation and all Confidential Information. Customer must obtain NavVis' express consent in writing before dissemination or disclosure of Confidential Information to third parties. NavVis reserves the right to initiate corresponding legal measures if Customer fails to comply with this requirement.
- c) NavVis is entitled but not obliged to name Customer in marketing material for potential customers of NavVis, in particular on its webpages. This shall be done at the general discretion of NavVis. Therefore, Customer hereby grants to NavVis a right to use the name, logo, or any other mark of Customer ("**Customer Mark**"), expressly limited to naming Customer as a customer of NavVis. Any other use of a Customer Mark or publication of the actual use (e.g. of the specific case of application) requires the prior, written consent of Customer. NavVis and Customer are entitled to disclose and publish the existence of their general cooperation.

## 10. LIMITATION OF LIABILITY

- a) Both parties are liable with regards to these GTC and each individual order pursuant to the following conditions:
  - i. Both parties are liable without restriction for loss or damage caused by intent (Vorsatz) by the respective party, its legal representatives, or officers, and of subcontractors or other auxiliary persons (Erfüllungsgehilfen).
  - ii. Both parties are liable without restriction for loss or damage resulting from death, physical injury or health impairment caused by the respective party, its subcontractors, legal representatives, or other auxiliary persons.
  - iii. Both parties are liable for loss or damage arising from the absence of assured characteristics (zugesicherte Eigenschaften) up to the amount encompassed by the purpose of the assurance and which was identifiable by the respective party at the time of giving the assurance.
- b) Liability under the Product Liability Act is not affected.
- c) Both parties are liable for loss or damage caused by gross negligence (grobe Fahrlässigkeit) by the respective party, its legal representatives or officers and of subcontractors or other auxiliary persons, however with respect to indirect loss and indirect damage limited to losses and/or damages reasonably foreseeable by the respective party at the time of the performance and that would typically arise out the performance of the respective service. In any event consequential damages (e.g. due to production downtime) and damages for lost profit shall be excluded.
- d) Both parties are liable for loss or damage caused by negligence (Fahrlässigkeit) by the respective party, its legal representatives, or officers and of other auxiliary persons, however limited to direct losses and/or direct damages reasonably foreseeable by the respective party at the time of the performance and that would typically arise out the performance of the respective service. In any event consequential damages (e.g. due to production downtime) and damages for lost profit shall be excluded. The aggregate liability for any and all such loss or damage arising out of the performance under or in connection with these GTC shall not exceed the total aggregate value of all orders according to these GTC. The liability for individual order shall be limited to the respective value of that order.
- e) Both parties are liable for loss and damage arising from the breach of Material Obligations by the respective party, its legal representatives, or auxiliary persons. Material obligations are the main obligations that form the basis of the contract, were crucial for the conclusion of the contract, and upon whose fulfilment the other party can reasonably rely (Kardinalpflichten). If a party is in breach of these Material Obligations through negligence (Fahrlässigkeit), its liability shall be limited to the amount reasonably foreseeable by the respective party at the time of the performance of the respective service. In any event consequential damages (e.g. due to production downtime) and damages for lost profit shall be excluded.
- f) All claims for loss or damage against NavVis shall become time-barred after twelve (12) months with the proviso that the statutory limitation period applies to claims with unlimited liability.
- g) **Indemnification.** NavVis will support Customer in defense against any third party claim that NavVis Products infringe third party patents or copyrights (or similar) in a court of competent jurisdiction and will indemnify Customer - in full or in case of negligence on behalf of NavVis for loss of profits limited to the annual Fee amount for subscription or the total contract value for purchase - against



a final judgment entered by a court of competent jurisdiction or any settlements arising out of such claim, provided that Customer satisfies the following conditions: Customer will (i) immediately notify NavVis in writing about any third party claim asserted and its reasons; (ii) grant NavVis sole control over the litigation and all associated actions with respect to such claim as far as reasonable; and support NavVis as far as necessary; (iii) provide all reasonable assistance, information and authority to NavVis which is required to enforce the actions mentioned in (ii); (iv) not make any admission against NavVis' interests or agree to any settlement of any claim without the prior written consent of NavVis in writing, unless made pursuant to a judicial request or order, and (v) enable NavVis to choose and instruct a lawyer.

#### 11. RIGHT OF INSPECTION

- a) NavVis Products may be subject to limitations and restrictions. Customer shall maintain relevant records sufficient to confirm compliance with these GTC as well as the EULA, applicable Documentation as well as any instructions provided by NavVis and any additional agreements.
- b) NavVis and its authorized representatives are entitled to conduct reasonable inspection to ensure compliance with these GTC as well as the EULA, applicable Documentation as well as any instructions provided by NavVis and any additional agreements, if any. For the purposes of inspection, Customer agrees to provide reasonable support and to enable access to its premises at which a NavVis Product is located. If the NavVis Product or parts thereof are located on the premises of third parties, Customer shall be obliged to arrange access to these third parties for NavVis and its authorized representatives in accordance with the above sentence.
- c) NavVis shall provide timely notification of such inspection and parties will agree on the details of such inspection. An inspection may consist of a self-audit questionnaire.
- d) If Customer is not in compliance, Customer must immediately pay the applicable Fees of the then current list price and taxes, and respective support fees, if applicable, for the past and the future to become compliant and reimburse all costs incurred by NavVis in performing the audit.

### III. SUBSCRIPTION

In case NavVis Products (Hardware and Software) and Services are provided on the basis of a subscription ("**Subscription**"), the following provisions shall apply and prevail over Part II General Provisions in the event of conflict. Fees paid for Subscription are non-refundable except as provided in these GTC.

#### 1. TERM AND TERMINATION

- a) Subscription will be effective from the date of delivery for a minimum term of thirty-six (36) consecutive full calendar months or as indicated otherwise in the Quotation ("**Subscription Term**"). Subscription start date shall be the 1<sup>st</sup> day of a calendar month and Subscription end date shall be the last day of a calendar month; Subscription shall start on the 1<sup>st</sup> of the respective month if delivered before or on the 15<sup>th</sup>, otherwise on the 1<sup>st</sup> of the month following delivery (e.g. for delivery on March 9<sup>th</sup>, Subscription Term starts on 1<sup>st</sup> of March, for delivery on 20<sup>th</sup> of March, Subscription Term starts on 1<sup>st</sup> of April).
- b) The parties can extend the Subscription Term prematurely at any time by mutual agreement or agree on other prices and conditions.
- c) In the event, Customer is unable to use the Subscription Product, or a replacement product of similar features and quality, as agreed due to a material defect for which NavVis is liable, Fee amount allocable to such period of impairment will be calculated with a daily pro ratio and credited against the invoice for the following monthly Subscription Fee or ceased or reimbursed by NavVis.
- d) At the end of the then-current Subscription Term, Customer shall immediately discontinue use of the Product and Services, return the Subscription Product to NavVis' premises at its own expense within five (5) business days, and except where required by law, delete any copies of Subscription Product or any related material in its possession and provide proof of deletion upon request. As the Subscription Product contains proprietary rights and trade secrets of NavVis these are one of Customer's main obligations and NavVis reserves all rights in the event of Customer's failure to comply timely. In the event Customer fails to return the Subscription Product in time, NavVis in its sole discretion may (i) extend the subscription on monthly basis and Customer shall pay additional monthly subscription fee installments at the same price and condition or (ii) request return of Subscription Product with a final deadline at any time. NavVis reserves the right to claim further loss and damage.
- e) Extraordinary termination is possible for good cause. From the perspective of NavVis, a good cause shall be given and NavVis may terminate extraordinarily in particular if:
  - i. Customer is in default of payment of any amount of the Fee. NavVis' interest in continuity of contract performance is bound to the timely payment of all due amounts by Customer as agreed;
  - ii. Customer suspends payments or discontinues its business operations;

- iii. Customer's economic position deteriorates significantly compared to the situation at the time of conclusion of the respective contract for subscription;
  - iv. Customer's economic position deteriorates significantly compared to the situation at the time of agreement on Subscription, or
  - v. an application is made for the opening of insolvency proceedings against Customer's assets, or insolvency proceedings are opened against Customer's assets, or are rejected due to a lack of assets; or
  - vi. Customer fails to discontinue a contract-breaching use of the Subscription Product despite NavVis' request within a cure period of five (5) business days unless otherwise extended in writing or breaches its contractual obligations under these GTC or the EULA to a material extent.
- f) In the event of termination by NavVis for good cause, Customer shall be required to make a final payment as follows. The level of the final payment will be ninety percent (90%) of the total amount of the Fee still outstanding until the end of the then-current Subscription Term taking into account a discount on the basis of the deduction for administration costs saved, early repayment and possible costs of legal action. Fee due and not paid prior to termination must be paid by Customer in full, irrespective of the above final payment. The amount of the final payment will be shown in the termination notice and shall be due upon receipt of the notice of termination. Any claim of by NavVis for damages shall remain unaffected.
- g) For the sake of clarity, Customer shall have no right of extraordinary termination because NavVis withholds its consent for reselling, letting, subletting, leasing, subleasing or otherwise transferring ownership right or rights of use regardless of any dispute about such consent.

## **2. OWNERSHIP, ALLOCATION**

- a) All Subscription Products remain the property of NavVis during the Subscription Term, and no rights, liens or encumbrance of ownership can be construed in favor of Customer. Customer must keep the Product free from all and any third-party rights, including liens, during the entire Subscription Term. Customer must notify NavVis immediately of any access to the Product by third parties, in particular prior to any imminent or effected enforcement proceedings (e.g. seizure, foreclosure or compulsory administration concerning the land on which the Product is situated) and must provide all information necessary for NavVis to exercise its ownership rights. In the event of seizure, to the extent legally permissible, the Subscription Product must be set aside and NavVis is entitled to see the seizure report. All costs of defense against such measures shall be borne by Customer.
- b) NavVis hereby grants Customer access to and use of the Subscription Product including right to allocate such access and use rights to employees and its Affiliates ("Allocation") provided: (i) Customer remains responsible for compliance with any applicable terms and conditions, including these GTC and the EULA and shall ensure that such Allocation is in compliance with any restrictions agreed between the parties (e.g. License is granted for a specific country) or by mandatory law and (ii) Customer remains fully liable for any breach of (i).
- c) Customer must not resell, let, sublet, lease, sublease or otherwise transfer ownership right or rights of use granted under the Subscription to any third party. As an exception, Customer may provide and hand over the Hardware, including the Software embedded in the Hardware, to third parties temporarily for a period no more than ten (10) days at a time, or no more than thirty (30) days in total per year, provided that (i) such third party is currently granted a lawful right of its own to use NavVis Processing Software, and (ii) Customer and third party have entered into an agreement that honors the rights and interests of NavVis in these GTC and applicable EULA.
- d) In any case Customer shall inform NavVis immediately of a new location (including the identity of the new possessor and the address of the new location) if the Subscription Product is re-located from the original location.
- e) In accordance with Section II. 6 (Delivery, Transfer of Risk and Cancellation), Subscription shall remain in force in the event of loss, destruction or irreparable damage of or to the Subscription Product, and Customer shall be obliged to pay the Fee until the end of the then-current Subscription Term as agreed, or shall make a lump-sum payment in the amount of ninety percent (90%) of the total remaining Fee, which takes into account a discount for administration costs saved and early repayment. Upon request by Customer and at NavVis' sole discretion, NavVis will make an offer for a new Subscription Product for replacement or an offer for repair of the Subscription Product and issue a Quotation. Customer may accept the Quotation at its own discretion.

## **3. WARRANTY, SUPPORT**

- a) The limited warranty in accordance with Section II. 7 (Limited Warranty) shall apply during the entire Subscription Term with respect to the Subscription Product. Customer's right to reduce the Fee for the time the defect persists remains unaffected. Instead of rescinding, Customer has the right to terminate the Subscription.
- b) For the sake of clarity, Customer has no further rights concerning maintenance of features and condition of Subscription Product, or any further defect and warranty.

- c) For the sake of clarity, Customer shall keep the Subscription Product in a proper and operational condition at its own cost with appropriate maintenance, repair, and support from NavVis in accordance with Section II. 8 (Support Service, Non-Warranty Repair. Customer) is not permitted to provide the Subscription Product to a third party for purposes of maintenance, repair, and support.

#### 4. INSURANCE, RISK OF LOSS

- a) Customer is obliged to provide insurance coverage for the Subscription Product at its own expense against all risks of damage and loss, including theft, throughout the entire period starting from Delivery until permanent return of Subscription Product at NavVis' premises. The respective insurance policy must satisfy the following preconditions:

- i. NavVis is the beneficiary in the event of damage,
- ii. the level of the insurance cover corresponds to the sum of the payments to be made to NavVis by Customer for the Subscription Product during the complete Subscription Term (including subscription instalments as well as any other payments), and
- iii. termination of the insurance with respect to NavVis interest is only possible with a notice period of at least 30 days.

- b) Customer must hand NavVis corresponding confirmations from the respective insurance companies at the latest upon receipt of the Subscription Product as well as from time to time during the Subscription Term, as proof of insurance coverage. Upon request by NavVis, Customer must provide NavVis with copies of the insurance policy.

If Customer fails to comply with this obligation to provide proof, NavVis shall be entitled, but is not obligated, to provide for an adequate insurance at Customer's expense, including all costs, insurance premium as well as all fees, costs, or expenses of NavVis ("**Insurance Expenses**"). Unless otherwise agreed, Customer hereby agrees to pay such Insurance Expenses in essentially equal monthly instalments for the entire remaining Subscription Term and NavVis will add such Insurance Expenses to the Fee in each respective (monthly) invoice. In this case, Customer hereby assigns all rights and claims, against the insurer or any other third party (injuring party), to NavVis as security for the claims of NavVis under the subscription and NavVis hereby accepts the assignment. Any retention envisaged under the insurance contract shall be for the account of Customer. NavVis must be informed immediately of any claim and its processing. Customer is authorized and obliged to assert these claims at its own expense, and to request payment to NavVis. NavVis shall offset any compensation payment received against Customer's payment obligations to NavVis or, subordinately, make it available to Customer for restoration of the Subscription Product.

#### 5. AMENDMENTS TO THE TERMS AND CONDITIONS

- a) To enable NavVis to react to market developments and to offer existing Customers new developments, NavVis reserves the right to adapt the terms and conditions of the subscription, including Subscription Fee ("**Subscription Alteration**"). NavVis shall provide Customer with sufficient advance notice of any Subscription Alteration.
- b) If a Subscription Alteration changes the conditions significantly to the disadvantage of Customer, Customer shall have a special right to terminate the contract in writing with four (4) weeks' prior notice from the date of the notification about Subscription Alteration. Otherwise, the Subscription Alteration shall take effect as determined by NavVis and on the effective date communicated in the notification about planned Subscription Alteration. If Customer does not accept the significant Subscription Alteration and effectively terminates within the notice period Section III.1 (Term and Termination) Subsection d), shall apply.

### IV. PROJECTS

#### 1. MAPPING PROJECTS

- a) NavVis Services provided may include Mapping. "**Mapping**" means the process of digitalizing indoor space with NavVis technology by moving an IMMS through the area to be mapped during a certain time as defined by project management and agreed with Customer. Laser scanners continuously acquire Data during the Mapping process. Cameras are triggered automatically at a predefined distance interval. Mapping might include outdoor area and use of third-party technology. If agreed, NavVis will provide Data created during a Mapping to Customer.
- b) NavVis generally reserves the right in its sole discretion to perform the Services owed to Customer with its own employees or independent third parties as subcontractors and Customer explicitly agrees thereto. To the extent necessary, NavVis will provide for respective agreements with its subcontractors the perform its contractual obligations towards Customer to full extent.
- c) Customer shall avoid, and be responsible for, any personally identifiable information/PII processed by NavVis during Mapping in compliance with applicable data protection laws and regulations.
- d) In support of professional Mapping preparation, Customer shall comply with the mapping preparation rules and any further duty of cooperation communicated by NavVis or subcontractor (including, but not limited to, provision of competent single person of contact

two weeks prior to the day of Mapping, provision of floor plans or drawings of the area to be mapped as agreed, complete pre-mapping preparations in consultation with NavVis or subcontractor, ensure access to such area as well as uninterrupted Mapping of minimum five (5) hours, as well as on-site support during Mapping etc.).

- e) Customer is responsible for any delays, quality reductions or other damages resulting from missing or insufficient building preparation, short term cancellations, deny of access, delays or other interruptions in Mapping caused by Customer. In case Customer cancels a planned Mapping (i) within one (1) week prior to planned start of Mapping Customer shall pay twenty-five percent (25%) of the agreed Fee, and in addition (ii) within forty-eight (48) hours prior to planned start of Mapping Customer shall pay fifty percent (50%) of the agreed Fee for the respective Mapping and parties will agree on a new date for Mapping. In case of missing or insufficient preparation including, but not limited to, interrupted or limited access to the area to be mapped or failure to remove confidential or personal data such as flipchart or white board writings, documents, name tags, photos or similar, Customer is responsible for any quality imperfections resulting from missing or insufficient preparation and shall (i) bear all additional costs incurred as well as any potential indirect damages such as lost profits (e.g. in the case of NavVis not being able to complete another already planned project due to the delay), (ii) indemnify and hold NavVis harmless for any third party claims relating thereof and (iii) does not have the right to deny or reduce payment or request free of charge improvements or claim any other right of retention/ to withhold payment (Zurückbehaltungsrecht). NavVis shall document costs incurred due to waiting time in units of fifteen (15) minutes based on the agreed pricing. Notwithstanding Customer's obligation to pay costs incurred, in case of delay of more than two (2) hours, parties shall mutually agree on a new date for Mapping considering resource availability.
- f) If re-Mapping or removal of captured information is requested by Customer, NavVis shall provide Customer with an individual quote based on the agreed pricing.
- g) NavVis will make Data available to Customer in an appropriate form. Due to NavVis technology using the IMMS for capturing photos, imperfections, stitching errors and missing floor filling of the panorama images – especially in narrow areas – are possible in some cases and Customer acknowledges and agrees that this limitation of the technology is no reason to reduce or deny payment or request free of charge improvements or claim any other right of retention/ to withhold payment.
- h) NavVis calculates the Fee for Mapping based on square meters of the area to be mapped. If Customer or NavVis has reasonable doubts that the square meters estimate does not match the real physical dimensions of the area to be mapped more than +/- five percent (5%) variation tolerance, e.g. given floor plans do not match reality, the Fee shall be recalculated based on square meters determined as follows: NavVis shall recalculate the size in square meters based on the site model in the relevant IndoorViewer instance, the measurement of given floor plans or CAD drawings, the physical survey of the building or similar. If Customer fails to object to NavVis' calculation within two (2) weeks, NavVis' recalculated size in square meters shall be deemed accepted. In case Customer objects in time, the size of the area to be mapped shall be ultimately determined by a person with specialist knowledge acting as an independent expert (Schiedsgutachter) and not as arbitrator (Schiedsrichter). The parties shall agree on the person of the independent expert, or, failing such agreement within a further two (2) weeks period, the independent expert shall be determined by the president of the chamber of commerce and industry (Industrie- und Handelskammer) in Munich. The outcome of the independent expert's opinion shall ultimately determine the square meters relevant for Fee calculation. Customer shall bear all associated costs and reimburse costs incurred by NavVis if square meters estimated by NavVis originally or recalculated by NavVis remain within a +/- five percent (5%) variation tolerance of the size such independent expert determines. Otherwise, each party shall bear its own cost and the cost for the expert shall be borne equally.
- i) In the event parties agree on provision of work services with deliverables by NavVis, the following shall apply unless otherwise agreed in writing:
- i. Each party will retain all ownership rights to its previously existing intellectual property (including but not limited to trademarks, copyrights, patent rights, trade secrets, confidential or proprietary information, techniques, methods, software, technology, plans, designs, and business processes). NavVis will retain all ownership rights to any work product including software, documentation, training or educational materials, inventions, innovations and developments ("**Work Product**") and NavVis grants Customer a non-exclusive, non-transferable and non-assignable license for the sole purpose of allowing Customer to make use of the work services and Work Product for its own internal business purposes as agreed. Such license is subject to Customer's payment of all Fees (including taxes) and expenses.
  - ii. Several individual services that may be used by Customer independently of one another (e.g. upgrade of several projects) shall be subject to separate and independent acceptance. Partial services (e.g. project milestones) shall be subject to respective separate acceptance. Total performance shall be deemed accepted upon acceptance of all individual or partial services. If final acceptance is expressly agreed, objections in relation to individual and partial services already accepted may be raised only concerning failed integrative interaction of the individual and partial services as intended and agreed.
  - iii. Following performance of the service owed (individual or partial) NavVis shall provide the Work Product to Customer. Customer shall review the Work Product and notify NavVis in writing within a period of five (5) business days in case unconditional acceptance has failed and specify for each objection all grounds preventing acceptance within a period of additional five (5)

business days. Acceptance shall be deemed if Customer (i) fails to inform about (failed) acceptance within ten (10) business days, or (ii) commences operations with parts of or complete (partial) services. Acceptance may not be refused where defects ascertained reduce use of the work product to only an insignificant degree. Such insignificant errors shall be rectified by NavVis in accordance with Section II. 7 (Limited Warranty) above.

The parties shall prepare and confirm a record of acceptance, declaring or refusing unconditional acceptance.

- iv. Should Customer have furnished a written list of defects in good time, NavVis shall rectify the specified defects within a reasonable period taking the project plan into account and again provide the Work Product for (partial) acceptance.

## V. MISCELLANEOUS

### 1. CHOICE OF LAW, DISPUTE RESOLUTION

- a) These GTC shall be governed by and construed under the laws of the country (and state if applicable) where NavVis as contractual party to these GTC is established, excluding the principles of conflicts of law and the UN Convention on Contracts for the International Sale of Goods. All claims arising out of or relating to these GTC will be held exclusively in the courts of the country (and state and city as applicable) where NavVis as contractual party to these GTC is established and registered except where Customer's local jurisdiction and venue will apply to the extent the applicable law and/or courts in Customer's country prohibits Customer's consent to the venue of the courts and jurisdiction.
- b) Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.
- c) NavVis wishes to address Customer's concerns in good faith. Before filing a claim to a court or any authority parties agree to informal dispute resolution by contacting the other party's management in writing at the registered business address. If a dispute is not resolved within fifteen (15) business days following receipt of such notice, either party may proceed formally as deemed necessary.

### 2. OTHER.

- a) **Entire Agreement.** These GTC constitute the whole agreement between the parties and supersede all previous agreements relating to the subject matter hereof and replace any prior oral or written communications between the parties, all of which are excluded, unless expressly agreed otherwise in writing. There are no conditions, understandings, agreements, assurances, representations, or warranties, expressed or implied, other than as expressly set out in this agreement (except where implied by law and exclusion is prohibited).

The terms of these GTC shall apply, regardless of any additional or conflicting terms on any purchase or subscription order or other correspondence or documentation submitted by Customer to NavVis. Any such additional or conflicting terms are deemed rejected by NavVis unless otherwise agreed in advance and in writing by NavVis with Customer. If these GTC or any other NavVis documents are translated into a language other than English, the English version shall prevail; provided, however, that, where a German term in italics is appended in this English language version to an English term or otherwise used, such German term (and not the English term to which it relates) shall be authoritative for the purpose of interpretation of the relevant English term in this Agreement. The use of the term "shall" generally indicates a definitive obligation (*müssen*) that admits of no discretion on the part of the Party instructed. Please keep a copy of the applicable version of these GTC and any other relevant documents for record.

- b) **Third Party Rights.** These GTC do not confer a benefit on, and are not enforceable by, any person or entity who is not a party to these GTC.
- c) **Survival.** All provisions of these GTC which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, confidentiality, warranty disclaimers, indemnity, and limitations of liability.
- d) **Transfer, Assignment.** Neither party may permanently or temporarily transfer or assign the contract concluded under these GTC nor any rights or obligations thereunder to a third party, excluding to NavVis' Affiliates, without the other party's prior written consent, which shall not be unreasonably withheld or delayed. Any purported transfer, assignment or an encumbrance shall be void and of no effect without NavVis' consent, except where mandatory law applies. Notwithstanding any assignment by Customer, Customer shall remain liable for the payment of all amounts due under these GTC unless agreed otherwise in writing (e.g. transfer and novation agreement).
- e) **Open-Source Software and Third-Party Software.** NavVis Products may include open-source software and/or other third-party software. The use of any third-party product (hardware or software) resold by NavVis to Customer will be governed by a separate agreement between the third party and Customer. NavVis does not provide any warranties related to any third-party product. NavVis has no liability or obligation to Customer related to any third-party product.
- f) **Force Majeure.** Except for payment and confidentiality obligations, or protection of intellectual property, neither party will be responsible for any delay or failure to comply with these GTC if the delay or failure arises from any cause that is beyond its reasonable



control, including without limitation Acts of God, floods, fires, loss of electricity or other utilities, epidemics, pandemics, act of a public enemy or terrorist, act of any military, civil, regulatory or governmental authority, change in law or regulation, labor problem or unavailability of supplies. Unless otherwise expressly agreed, the obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party's performance and defaulting party shall inform the other party about expected period.

- g) **No agency.** The parties acknowledge that these GTC are not intended and do not create an agency, partnership, joint venture or any other type of relationship except the contract relationships established hereby. Each party hereto is an independent contractor. Neither party shall assume, create or bind any obligation of any nature whatsoever on behalf of the other party.
- h) **No waiver.** Failure to exercise, or any delay in exercising, any right or remedy provided under these GTC or by law shall not constitute a waiver of such right or remedy under these GTC.
- i) **Severability.** The invalidity or unenforceability of any provisions of these GTC shall not affect the validity or enforceability of any other provision of these GTC, which shall remain in full force and effect. Such provision shall be replaced by a provision which comes as near as possible to the intention of the parties as regards their economic objective or which would have been agreed by the parties if they had known the invalidity of such provision. Notwithstanding the foregoing, if this Section for Severability is invoked and, as a result, the value of these GTC is substantially impaired for either party, as determined by such party in its sole discretion, the affected party may terminate these GTC by written notice with immediate effect to the other.
- j) **Attribution Notices.** Customer will not remove, modify, obscure, resize, or relocate any ownership, attribution, or branding notices from NavVis Products.
- k) **Headings.** Headings of Sections have been added for convenience of reference and shall not be deemed part of these GTC.
- l) **Amendment.** Any further agreement or amendment to these GTC, other than those defined above, shall be in writing.

### 3. DATA PROTECTION

#### 3.1. DATA PROCESSING AGREEMENT (DPA) for processing PII with NavVis on-premises Software

- a) Each party is a separate Data Controller when processing any other PII or non-PII other than contained in the Data and shall be solely responsible to comply with any applicable data protection regulations.
- b) NavVis shall process and store all PII for any data processing activities where it acts as data controller as laid out in NavVis Privacy Policy which shall be deemed incorporated to this GTC.

#### 3.2. DATA PROCESSING AGREEMENT (DPA) for processing PII with NavVis SaaS

- a) Customer agrees that it acts as data controller as defined in the 2016/679 EU Regulation on the General Data Protection Regulation ("GDPR") or its equivalent in data protection laws applicable to Customer for the NavVis SaaS. This means that Customer determines the nature, scope, context and purposes of the processing and the risk to the rights and freedoms of natural persons. Customer acknowledges that NavVis GmbH acts as data processor in the sense of the GDPR. This means that NavVis shall only process data according to the instructions of the Customer.
- b) Customer acknowledges that NavVis acts globally, and that PII may be processed outside of NavVis' or Customer's country of establishment. All PII received or collected by Customer and sent to NavVis GmbH for hosting or processing will be hosted or processed in accordance with the applicable data protection provisions and the purposes of these GTC or as otherwise permitted.
- c) Customer, at its choice made through the NavVis Instant Management System by deploying instances, determines the hosting location for the IVION Processing which may be an AWS server located in the EEA, USA or Japan. Processing Task will always be carried out in an AWS server located in Frankfurt am Main, Germany (EEA).
- d) Customer expressly acknowledges, that NavVis GmbH is subject to GDPR even if Customer is not subject to GDPR. For this reason, if Customer does not accept the data processing agreements incorporated in this GTC, Customer represents to enter into a data processing agreement with NavVis GmbH which fulfils the criteria set out in Art. 28 GDPR.
- e) Unless otherwise agreed between the Parties in a separate agreement
  - i. This GTC incorporates the NavVis Data Processing Agreement ("DPA"), if Customer uses NavVis SaaS to process Customer PII (as defined in the DPA).
  - ii. This GTC incorporates the Standard Contractual Clauses between controllers and processors ("Controller-to-Processor Clauses" and "Processor-to-Controller") approved by the European Commission Implementing Decision (EU) 2021/914 of 4 June 2021 (the "SCCs"). The SCCs will apply if: (i) the GDPR applies to Customer's use of the NavVis SaaS to process PII; and (ii) PII is transferred either directly or via onward transfer, to a country outside of the European Economic Area not recognized by the European Commission as providing an adequate level of protection for PII subject to GDPR (together a



“Data Transfer”). If the Customer is a controller (as defined in the GDPR) and subject to GDPR, the Controller-to-Processor Clauses will apply to a Data Transfer. If Customer is a controller in the sense equivalent to the GDPR, but not subject to GDPR, the Processor-to-Controller Clauses apply to Data Transfer.

- iii. This GTC incorporates the NavVis UK GDPR Addendum to the DPA, if the UK GDPR applies to Customer's use of NavVis Services to process UK Customer Data (as defined in the NavVis UK GDPR Addendum).
- iv. This GTC incorporates the NavVis CCPA Terms (“CCPA Terms”), if the CCPA applies to Customer's use of the NavVis SaaS to process Personal Information (as defined in the CCPA Terms).

### **3.3. COMPLIANCE OF DATA PROCESSING**

- a) All personal data received or collected by either party in connection with these GTC will be processed in accordance with the applicable data protection provisions and the purposes of these GTC or as otherwise permitted. Customer acknowledges that NavVis acts globally, and that personal data may be processed outside NavVis' country of establishment. All such transfers of personal data shall be in accordance with applicable data protection laws.
- b) Customer shall inform NavVis in case NavVis performance according to these GTC or in connection with Products or Services include NavVis' processing of personal data on behalf of Customer. If such processing of personal data on behalf of Customer is considered as data processing according to applicable laws and regulations, Customer and NavVis shall enter into a separate agreement regarding data processing.