



qlayers



Terms & Conditions

qlayers

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General Terms and Conditions – Purchase of Robot

1. General

- 1.1. These general terms and conditions (**Terms and Conditions**) shall apply to all relations between Customer and Qlayers relating to the products and services provided by Qlayers to Customer. Which includes but is not limited to the purchase of Qlayers' robots by Customer and the supply, delivery, and installation by Qlayers of the **Services**, consisting of:
 - The licensing of the software; and
 - Maintenance and Training services.
- 1.2. Deviations from the Terms and Conditions shall only be valid, in case and insofar as they have been agreed on explicitly in writing between parties. Insofar as such deviations did not take place the provisions in these Terms and Conditions shall continue to apply unimpaired.
- 1.3. The general terms and conditions of Customer shall not apply to the relation between Qlayers and Customer. Such general terms and conditions are expressly rejected by Qlayers.
- 1.4. Customer shall use Qlayers' robots and is only authorized to use Qlayers' robots, Documentation and Software and in accordance with the Commercial Terms and these Terms and Conditions. Customer accepts the delivery of the products and services in accordance with the Commercial terms and these Terms and Conditions and agrees to comply with all requirements herein.
- 1.5. The product specifications of the robot is included in the "Technical Description".
- 1.6. When in these Terms & Conditions 'goods', 'product' or 'robot' is mentioned, it should be assumed that this refers to the coating robot sold to Customer after the Commercial Terms are of legal force.

2. Definitions

In these Terms and Conditions the following words shall have the following meanings:

Additional Services	:	means services and/or updates that are not standard and that are specifically requested by Customer;
Commercial Terms	:	means the terms as specified in Qlayers' quotations and agreements included but not limited to the purchase of the robot(s), maintenance and training services;
Customer	:	means the contract party of Qlayers;
Delivery	:	as defined in Clause 5.1 of the Terms and Conditions;
Documentation	:	means up-to-date, English-language documentation and instructions on how to operate and maintain any robot, including: (i) operations manual , (ii) operations checklist, (iii) maintenance manual and (iv) product specifications;
Intellectual Property Rights	:	means all intellectual property rights, including but not limited to copyrights, trademarks, service marks, data base rights, patents and software;
Product Price	:	as defined in Clause 3.2 of the Terms and Conditions;
Monthly Support Fee	:	as defined in Clause 3.2 of the Terms and Conditions;
Services	:	as defined in Clause 1.1 of the Terms and Conditions;
Software	:	means any computer program, software module or package or any part and each copy thereof (including copies merged into other software) used in and for the robot;
Software License	:	as defined in Clause 7 of the Terms and Conditions;
Terms and Conditions	:	as defined in Clause 1.1 of the Terms and Conditions;

3. Price

- 3.1. For the goods and services provided by Qlayers to Customer pursuant to the Commercial Terms and this Terms and Conditions, Customer shall pay the fees to Qlayers as specified in the Commercial Terms.
- 3.2. The fees shall be calculated on the basis of two elements:
 - a) a fixed purchase price (the **Product Price**) for the purchase of the robot(s); and
 - b) a service package that comes with every robot (the **Monthly Support Fee**).
- 3.3. Customer acknowledges that the Product Price may unilaterally be increased by Qlayers every six months resulting from materials, production or personnel cost increases. Qlayers shall inform Customer within a reasonable time about any price increase.
- 3.4. The Monthly Support Fee rate shall be adjusted for monetary value changes due to inflation, on the basis of the change in the Consumer Price Index (CPI) published by the Centraal Bureau voor de Statistiek (CBS) in the Netherlands, each year on January 1st.
- 3.5. The agreed Product Price and Monthly Support Fee shall be paid in a timely manner and in compliance with the payment conditions agreed upon, regardless whether the purchased robot is used or not.
- 3.6. All prices are exclusive VAT and other government levies (including but not limited to withholding taxes) that have been or shall be imposed.
- 3.7. All invoices and payments shall be in EUR unless agreed upon otherwise in writing.
- 3.8. Customer shall pay the invoices within the payment term defined in the Commercial Terms.
- 3.9. If the Customer fails to pay the fees due in a timely manner, a statutory commercial interest of 8% (on an annual basis) on the outstanding amount shall be due without a notice of default being required. The interest will be invoiced on a monthly basis. The interest will be calculated on a daily basis.
- 3.10. If Customer fails to pay the amount due within 14 days after receiving a reminder or notice of default, Qlayers may collect the claim, in which case Customer is also obligated to pay all judicial and extrajudicial costs in addition to the total amount due, including all costs charged by an outside expert, if applicable.
- 3.11. In case of non-payment of any (part) of the Product Price or the Monthly Support Fee, Qlayers may immediately terminate the Software License in accordance with Clause 14 of the Terms and Conditions.
- 3.12. All incurred tax obligations by Customer with regard to the Commercial Terms and these Terms and Conditions are borne by the Customer.

4. Title and risk

- 4.1. The goods shall be deemed transferred to Customer when Qlayers, or a carrier on behalf of Qlayers, has delivered the goods at a place agreed upon by Qlayers and the Customer (the **Delivery**). In the event that the robot is ready for Delivery resulting in Qlayers being able to fulfil its duties under Clause 5, and the Delivery is delayed, or is made impossible, due to reasons that are the responsibility of the Customer, Qlayers reserves the right, at its sole discretion, to hold the machines in consignment, wherein the robot(s) shall remain at the disposal of the Customer and are consequently held by Qlayers for the Customer's risk.
- 4.2. The title to any robot which is delivered to Customer shall pass to Customer on the Delivery according to Clause 5 of the Terms and Conditions and after payment of the outstanding fees (*levering onder eigendomsvoorbehoud*).

5. Transport and installation

- 5.1 The Delivery of any robot will be carried out by Qlayers in accordance with the Commercial Terms. Delivery shall typically be Ex Works (EXW) or Free Carrier (FCA), Incoterms® 2020, at the Qlayers facility in Delft, unless otherwise agreed upon in the Commercial Terms by Qlayers and Customer.
- 5.2 The costs for transportation and installation of the robot will be borne by the Customer and, for the avoidance of doubt, are not included in the fees as referred to in Clause 3 of the Terms and Conditions, unless otherwise agreed upon.
- 6. Use of robot**
- 6.1 Customer shall use its best effort to ensure that the use of the robot shall be in accordance with the instructions and Documentation provided by Qlayers, the Commercial Terms agreed upon between the parties and the Terms and Conditions. The Customer shall ensure that the robot is only used and operated by trained personnel trained in accordance with Clause 9 of the Terms and Conditions.
- 6.2 The Customer may not, without Qlayers' prior written approval, permanently remove or modify any part of the robot.
- 6.3 The Customer is not allowed to modify, decompile, reverse engineer, adapt or correct errors or make any other changes to the robot.
- 6.4 Customer has the obligation to properly insure the robot in a way that continuity of the robot and the Commercial Terms and these Terms and Conditions can be assured.
- 7. Software licence**
- 7.1 For the duration of the software license term as defined in the Commercial Terms, Qlayers grants to the Customer a limited, non-transferable and non-exclusive licence to use the Software, only to operate the robot in accordance with the Commercial Terms and these Terms and Conditions (**License**).
- 7.2 Customer agrees that the Software and Documentation provided by Qlayers under the Commercial Terms or any renewals, extensions, or expansions thereof, shall, be treated as proprietary and at trade secret of Qlayers or its suppliers, and be subject to Clause 18 (*Confidentiality*) of the Terms and Conditions.
- 8. Customer undertakings**
- 8.1 Customer shall use its best efforts to ensure that the robot including the crawler, paint pump and support systems, such as, but not limited to, the fall arrest system, are maintained. The responsibility for the timely maintenance of the aforementioned items rests solely with the Customer, unless explicitly stated otherwise. The fact that Qlayers is responsible for actually performing the maintenance does not relieve Customer of its responsibility for arranging the maintenance.
- 8.2 In the event that parties agreed upon the operator training in the Commercial Terms and the training is taking place at Customer's site, Customer shall make the site(s) timely and properly available to Qlayers personnel and subcontractors with all facilities as specified by Qlayers needed for the training, such as heat, light, ventilation, electrical power and outlets, a steel wall if required and associated support systems, ultimately at the agreed time of training, or otherwise reasonably required to enable Qlayers to perform the operator training of Customer's personnel without interruption.
- 8.3 If Customer fails to perform or is delayed in performing its obligations under this Clause 8 Customer shall reimburse Qlayers for all related extra costs and expenses, without prejudice to Qlayers right to postpone its commitments.
- 9. Training services**
- 9.1 Parties agree that adequate training of the personnel of Customer is required for proper operation and maintenance of the robot. Parties can agree to include training per robot of the personnel of Customer, for the purpose of daily operation and maintenance (minimum levels of certification are specified by Qlayers). The training of extra personnel of Customer is possible at additional cost.
- 10. Maintenance, Defects & Non-Performance problem solving**
- 10.1 Maintenance of the robot shall be performed by Qlayers, or authorized service providers, as defined and at the frequency and level detailed in the "Qlayers_Service and Maintenance" document, unless differently agreed upon in the Commercial Terms. Customer is expressly not permitted to allow non-authorized third parties to perform maintenance services for the robot or to perform such maintenance services itself, unless otherwise stated in writing by Qlayers.
- 10.2 In case the robot does not operate according to the specification as defined in the associated Documentation, the Customer is obliged to report a potential non-performance (**PNP**) of the robot. Regarding PNP the following procedure applies:
- A PNP shall be reported to Qlayers in line with the "Qlayers_Service and Maintenance" information document.
 - Qlayers shall assess the PNP within 24 hours in which assessment is determined (i) whether the robot was used according to the Documentation and (ii) severity level of the PNP and (iii) a clear plan of action to remedy the PNP issue.
- 10.3 In case the remedial activities mentioned in Clause 10.2.b. do not enable the robot to operate according to the specification as defined in the associated Documentation within 48 hours after the receipt of the PNP report mentioned in 10.2; the PNP is classified as Non-Performance (NP) of the robot as will be explicitly communicated to the Customer by Qlayers (the **Notification of Non-Performance**). In case of a dispute, the classification given by Qlayers to the PNP shall prevail.
- 10.4 In case of Non-Performance of the robot, the following obligations for Qlayers arise:
- Qlayers is obliged to deploy, within 24 hours after the Notification of Non-Performance, at least one of its employees or associated partners in order to address the NP issue at Qlayers' own cost.
 - In case the measures taken in 10.4.a. do not solve the NP issue to the satisfaction of both parties, parties will go in discourse to conclude a solution satisfactory for both parties.
- 10.5 In case the robot has been used not according to the associated Documentation (including, but not limited to, operated by uncertified personnel, not being maintained according to documentation) all activities related to this Clause will be seen as Additional Services and charged accordingly.
- 10.6 In case the NP is caused by a Defect covered by Warranty, Qlayers will only pay for the costs of replacement of parts during the first year as is specified by Article 15 (Warranty).
- 11. Updates and additional services**
- 11.1 Qlayers may, at any time, but is never obligated to, perform updates to the robot. Customer will use its best efforts to enable Qlayers to perform such updates to the robot.
- 11.2 Qlayers may also provide Additional Services including updates, additional training, service or support with respect to the robot at the request of Customer at terms to be agreed upon between the Parties.
- 12. Buy Back Right Qlayers**
- 12.1 Parties can agree in the Commercial Terms, that if the relationship between Qlayers and Customer will end before or at the end of the Term, Qlayers shall have the right, but not the obligation, to buy back the robot that has been delivered to the Customer in accordance with Clause 4 of the Terms and Conditions.
- 12.2 In the event of a repurchase by Qlayers following Clause 12.1, the parties shall record such transaction in writing reflecting the change in title of those robot(s) from Customer to Qlayers.
- 12.3 In case of a buy back, Customer shall forthwith the return of the robot to Qlayers together with the Documentation to the location as designated by Qlayers. The robot shall be returned in good condition, subject only to the ordinary wear and tear resulting from proper use in compliance with the Commercial Terms and the Terms and Conditions.
- 12.4 Customer shall be responsible for appropriate packaging of the robot and for shipment and delivery (including payment for freight and insurance).
- 13. Intellectual property**
- 13.1 Customer acknowledges and agrees that the robot is protected by Intellectual Property Rights. The Intellectual Property Rights relating to the robot are and shall remain the exclusive property of Qlayers.
- 13.2 Neither the Terms and Conditions nor the Commercial Terms grant the Customer any right or title to the Qlayers' Intellectual Property Rights, other than the right to use and license provided in Clause 7 of the Terms and Conditions, nor do these documents in any way constitute a transfer or assignment of

the Intellectual Property Rights to Customer. All Intellectual Property Rights related to the robot(s) shall always be and remain the sole and exclusive property of Qlayers. Customer shall not hold itself out as owner of such robot(s) Intellectual Property Rights or assets or make any representation to that effect and Customer may not in its accounts or in any other document treat, or account for, the robot(s) Intellectual Property Rights or assets as assets of Customer.

- 13.3 Qlayers shall, at its own expense, defend any claim or proceeding against Customer based on an allegation that the robot would constitute an infringement of Intellectual Property Rights, provided that Customer promptly notifies Qlayers in writing of such claim. Customer shall provide Qlayers with reasonable cooperation and assistance in defending any such claim or proceeding. If, as a result of any suit or proceeding so defended, the robot, or any part thereof, is found by a court or arbitration panel to infringe any third party intellectual property rights, Qlayers shall also at no cost to Customer (a) obtain for Customer the right to continue to use the robot, or any part thereof, (b) replace or modify the robot to be non-infringing, or (c) terminate the relation between Qlayers and Customer in whole or in part with immediate effect, without any obligation to pay any damages.
- 13.4 Customer shall not infringe the Intellectual Property Rights of Qlayers or its suppliers or perform any other acts which may in any way impair or negatively affect the Intellectual Property Rights of Qlayers or its suppliers or the value of such Intellectual Property Rights. This means, without being exhaustive, that Customer may not reproduce, duplicate, modify, publish, translate, in whole or in part, Qlayers's Intellectual Property Rights for commercial or non-commercial purposes.
- 13.5 Customer shall not be permitted to remove any indications concerning copyrights, trademarks, trade names or other rights of (intellectual) property from the robot, documentation and/or any other material of Qlayers.
- 13.6 The robots generate data. Qlayers is (comes) the sole owner of this data in any form. Customer is not permitted to permit others to download, use or access this data. Qlayers grants Customer a limited, non-transferrable, non- (sub)licensable, non-exclusive and royalty-free licence, for the term of Commercial Terms, to review and use the insights and reports and data contained therein, solely for its own internal purposes, an explicitly not for sale to other parties.
- 13.7 Any and all Intellectual Property Rights that arise or are developed during the execution of the Commercial Terms or the use of the robots shall be the sole and exclusive property of Qlayers.
- 14. Duration and termination**
- 14.1 After the expiration of the term mentioned in the Commercial Terms, the term shall be automatically renewed each time for a new period of 1 (one) years, unless one of the parties notifies the other party in writing of the termination (cancellation) of the Commercial Terms. Such notice shall be given at least two (2) months prior to the end of the term mentioned in the Commercial Terms.
- 14.2 Parties have the right to terminate the Commercial Terms in whole or in part with immediate effect, without any obligation to pay any damages, if any of the following circumstances occur:
- the other Party is granted a suspension of payments (provisional or otherwise);
 - bankruptcy is filed for the other Party; or
 - the other Party is declared bankrupt.
- 14.3 Qlayers has the right to terminate the Commercial Terms in whole or in part with immediate effect without judicial intervention by written notice to Customer, if (i) Customer infringes Qlayers' rights, including but not limited to Qlayers' Intellectual Property Rights, (ii) Customer uses the robot for unlawful purposes or for purposes contrary to public order and morality (iii) Customer uses the robot not in accordance with the Commercial Terms and/or the Terms and Conditions, (iv) third party maintenance services are obtained by Customer with respect to the robot, unless agreed upon that it is allowed, and/or (v) the business of Customer is terminated or transferred in whole or in part to a third party, such termination shall not prejudice further compensation.
- 14.4 In addition to the above, the Commercial Terms can be terminated if both parties agree to do so in writing.
- 15. Warranty**
- 15.1 Qlayers warrants that the robots will conform to the specifications as communicated by Qlayers and be of satisfactory quality and be materially free from defects in design, material, installation and workmanship caused by Qlayers.
- 15.2 Notwithstanding the above, the Warranty explicitly deals with design flaws rendering the robots of less value, and not with day to day issues with robot utilisation based on ordinary wear and tear parts and consumables. To make use of the Warranty, its required that the robots are operated in accordance with Qlayers provided training and manuals. Warranty starts at Delivery of the robots. The Warranty term is specified in the Commercial Terms. In case the robot has been used not according to the associated Documentation (including, but not limited to, operated by uncertified personnel, not being maintained according to documentation) the Warranty will lapse.
- 16. Limitation of liability**
- 16.1 Parties shall carry their own costs and/or damages on a knock-for-knock principle:
- Indemnity by Customer. Customer shall fully indemnify and defend Qlayers from and against all damages to the extent arising from injury or illness or death of any employee or agent of Customer, or any related third party, or from loss or damage to any property of Customer not owned (held) by Qlayers, or related third parties, except to the extent caused or contributed to by the gross negligence or wilful misconduct of Qlayers; and
 - Indemnity of Qlayers. Qlayers will fully indemnify and defend Customer against all damages to the extent arising from injury or illness or death of any employee or agent of Qlayers or related parties, or from loss of or damage to property of any member of Qlayers not owned by Customer, except to the extent caused or contributed to by gross negligence or wilful misconduct of Customer.
- 16.2 To the extent permitted under applicable law, Qlayers shall not be liable for any loss, damage or penalties imposed by regulatory authorities as a result of or relating to the robot that are not covered by Clause 16.1, including but not limited to loss of data, revenue, profits or other economic benefits caused by Customer as a result of use of the robot in violation with the instructions provided by Qlayers or the industrial standards. In addition, in no event Qlayers shall be liable for direct or indirect, incidental or consequential damages arising out of the use of the robot, including but not limited to the to the unavailability of the robot. Recourse claims are explicitly excluded by Qlayers.
- 16.3 In any event, the maximum liability of the Parties on any ground shall be limited to the total amount paid by Customer to Qlayers for the relevant robot giving rise to the liability during the course of the year preceding the claim or the amount of EUR 2,500,000 (two and a half million), the lower of these two amounts which will always determine the limit of liability. In case an insurance company pays out the insurance proceeds with regard to the damage occurred, these proceeds will be assigned to the party being liable for the damage occurred, in case this party is not the party receiving the proceeds.
- 16.4 No liability shall exist for damages or penalties that are not reported in writing to the other party within ninety (90) days of their occurrence, or for damages where the other party has not taken adequate steps to limit any such damages.
- 16.5 The limitation of liability referred to in this Clause shall not apply for damages related to a breach of the obligations under Clauses 13 and 18 of the Terms and Conditions.
- 17. Assignment**
- 17.1 The Commercial Terms shall not be assigned or otherwise transferred by Customer without the prior written consent of Qlayers, which consent shall not be unreasonably withheld. Any such assignment without such consent shall be null and void.
- 17.2 Customer accepts that Qlayers may transfer and assign her obligations under the Commercial Terms (in whole or in part) and the performance of any or all of Qlayers' rights and obligations under the Commercial Terms to a third party at any time without the prior written consent of Customer.
- 18. Confidentiality**
- 18.1 Customer acknowledges that all technical information, Software and Documentation provided to Customer in accordance with the Commercial Terms, and all information relating to the robot is proprietary and confidential in nature. Customer shall protect the confidentiality of such information and prevent any unauthorized use, dissemination or publication of such information.

- 18.2 Without limiting the foregoing, Customer shall not permit access to the robot or the Confidential Information by anyone other than its employees directly involved in the evaluation of the robot. Customer shall not in any way disclose any reports or results obtained hereunder. Customer shall not copy or duplicate any information without obtaining the prior written consent of Qlayers.
- 19. Force majeure**
- 19.1 If Customer or Qlayers is unable to perform its obligations under the Commercial Terms or the Terms and Conditions as a result of force majeure, the party concerned shall not be liable for any delays or shortcomings in the performance of the obligations, nor for any damage resulting therefrom to the other party provided that it (i) notifies the other party by registered letter as soon as possible of the nature and causes of such unforeseeable situation beyond its control, and (ii) uses its best efforts to remedy such causes of non-performance as soon as possible, and (iii) diligently continues performance as soon as the causes of the force majeure are removed. The occurrence of a Force Majeure will result in a suspension of planned services and the Term, unless Parties agree differently.
- 19.2 All causes beyond the reasonable control of Qlayers or Customer, including but not limited to fire, explosions, power failure, earthquakes, floods, heavy storms, strikes, embargoes, labor disputes, acts by civil or military authorities, (cyber) terrorism, natural disasters, acts or neglect of Internet traffic services, acts or neglect of regulatory or governmental agencies shall be considered Force Majeure.
- 20. Miscellaneous**
- 20.1 Amendments to the Commercial Terms can be agreed upon between the parties in writing.
- 20.2 Clauses of the Terms and Conditions which by their nature should continue to apply after the duration of the Commercial Terms, shall continue to apply after termination of the Commercial Terms.
- 20.3 The failure of a Party to exercise any right or remedy shall not constitute a waiver of such right or remedy.
- 20.4 The Commercial Terms and the Terms and Conditions constitutes the entire agreement between the Parties and supersedes any and all prior representations, understandings, discussions or agreements between Customer and Qlayers with respect to the subject matter hereof, unless explicitly mentioned otherwise.
- 21. Governing law and jurisdiction**
- 21.1 The Commercial Terms and the Terms and Conditions and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with the law of the Netherlands.
- 21.2 All disputes that may arise in connection with the Commercial Terms and/or Terms and Conditions or any agreements resulting thereof shall be submitted to the competent court of The Hague (*Den Haag*), the Netherlands.