

Last Revised: May 2nd, 2018

TERMS AND CONDITIONS OF SALE

INTRODUCTION

Misty Robotics, Inc. (“**Misty Robotics**”, “**we**”, “**our**”, or “**us**”) provides an online store (the “**Store**”) on its website in order to enable you to purchase products offered through Store (“**Products**”). By purchasing a Product from the Store, you agree to be bound by these Terms and Conditions of Sale (“**Terms of Sale**”) along with any related terms that we may provide in connection with such purchase, including, without limitation, the Misty Robotics Terms of Service available at <https://www.mistyrobotics.com/legal/terms-of-service/>, and the limited warranty provided with the Product (“**Limited Warranty**”). Any software embedded in the Product (including any updates thereto) is licensed, not sold, and your access to and use of such software is governed by the applicable End User License Agreement made available by Misty Robotics.

THIS IS A LEGAL AGREEMENT. BY PLACING AN ORDER FOR PRODUCTS, YOU ARE ACCEPTING AND AGREEING TO THESE TERMS OF SALE. YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ACCEPT AND AGREE TO THESE TERMS OF SALE. YOU REPRESENT THAT YOU ARE OF SUFFICIENT LEGAL AGE IN YOUR JURISDICTION OR RESIDENCE TO PURCHASE AND USE PRODUCTS AND TO ENTER INTO THIS AGREEMENT. IF YOU DO NOT AGREE WITH ANY OF THE PROVISIONS OF THESE TERMS OF SALE, YOU SHOULD NOT PURCHASE THE PRODUCTS.

Please read these Terms of Sale carefully. They require the use of binding arbitration to resolve disputes rather than jury trials or class actions. Please refer to the section entitled “Applicable Law and Dispute Resolution” for more information.

These Terms of Sale give you specific legal rights, and you may also have other legal rights in addition, which vary from jurisdiction to jurisdiction. The disclaimers, exclusions, and limitations of liability in these Terms of Sale will not apply to the extent prohibited by applicable law. Some jurisdictions do not allow the exclusion of implied warranties or the exclusion or limitation of incidental or consequential damages or other rights, so those provisions of these Terms of Sale may not apply to you.

In the case of inconsistencies between these Terms of Sale and information included in any other materials related to the Products (e.g., promotional materials and mailers), these Terms of Sale will always govern and take precedence.

Please [click here](#) to view a printable version of these Terms of Sale.

1. AVAILABILITY AND CANCELLATIONS. All Products offered on the Store are subject to availability, and we reserve the right to impose limits on any order, to reject all or part of an order and to discontinue offering certain Products without prior notice. Misty Robotics reserves the right to cancel or refuse any order for any reason at any time prior to shipment, including after an order has been submitted, whether or not the order has been confirmed. We may attempt to contact you if all or a portion of your order is cancelled, or if additional information is needed to complete and accept your order.

2. PRICING AND PAYMENT. Prices for the Products are subject to change at any time, but changes will not affect any order for Products you have already placed. By providing a credit card or other payment method

accepted by Misty Robotics, you represent and warrant that you are authorized to use the designated payment method and that you authorize us (or our third-party payment processor) to charge your payment method for the total amount of your order (including any applicable taxes and other charges). You will provide Misty Robotics with accurate and complete billing information including legal name, address, telephone number, and credit card or debit card billing information. If such information is false or fraudulent, Misty Robotics reserves the right to terminate your order and to seek any other legal remedies that may be available. Misty Robotics is not responsible for any charges or expenses (e.g., for overdrawn accounts, exceeding credit card limits, etc.) resulting from charges billed by Misty Robotics. Each charge will be considered valid unless disputed by you in writing within thirty (30) days after the billing date. No adjustments will be made for disputed charges made more than thirty (30) days after the billing date. All fees will be paid in U.S. dollars and are due as set forth on the Sites. Misty Robotics' fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you will be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Misty Robotics' income. In the event you want to change or update payment information associated with your Misty Robotics account, you can do so at any time by logging into your account and editing your payment information.

3. RESERVATIONS AND PREORDERS. Products available for reservation and pre-order are not offers for sale by Misty Robotics. Your placement of a reservation and pre-order does not create a contract for sale. By placing a reservation and pre-order for a Product that is not yet available for sale, you make an offer to Misty Robotics to purchase the Product subject to these Terms of Sale. You may cancel your offer to purchase Products at any time prior to shipment and you will not be charged. When the Product is offered for sale, Misty Robotics may accept your offer to purchase Products subject to these Terms of Sale. At that time, Misty Robotics will capture payment on the payment card you provided and at or after the applicable date on the order ship your Product. Misty Robotics may obtain an additional authorization from your payment card company to confirm necessary funds are available to purchase the Products requested.

4. RESALE AND TITLE TRANSFER. Purchases made on the Store are intended for end users only, and are not authorized for resale. Title for Products purchased from the Store passes to the purchaser at the time of delivery by Misty Robotics to the freight carrier, but Misty Robotics and/or the freight carrier will be responsible for any Product loss or damage that occurs when the Product is in transit to you.

5. SHIPPING AND DELIVERY. Prices for the Products do not include shipping costs. Our delivery charges and methods are as described on the Store website from time to time. The estimated arrival or delivery date is not a guaranteed delivery date for your order. Refused deliveries will be returned to our warehouse. It may take up to 45 days for the returned items to be identified as refused and processed for a refund.

The Products available on the Store have been designed, marketed and sold for use by residents of the United States and Canada, AS APPLICABLE. All safety warnings, information, instructions, packaging, in-box materials, mobile apps, and support services are provided in English (though Misty Robotics may choose to make the same available in additional languages as Misty Robotics deems appropriate in its sole discretion). The Products available on the Store are not intended for use outside of the United States and Canada, AS APPLICABLE. You are responsible for complying with all applicable laws and regulations of the country for which the Product is destined. We are not liable or responsible if you break any such law.

6. RETURNS. If, for any reason, you want to return the Product you purchased from the Store that has been shipped to you for a refund, you must notify us no later than 30 days following the date of purchase or shipment (whichever is later) (the "**Cancellation Period**"). To initiate a return, you must inform us of your decision within

the Cancellation Period by contacting Misty Robotics customer support and clearly stating your desire to return the Product and, if purchased and shipped directly from us, your agreement to any applicable restocking fees. Although it will not affect your right to a refund, please include details on where and when you purchased the Product and your reason for returning the Product. Misty Robotics customer service will provide you with a Return Materials Authorization (“**RMA**”) that must be included with your return shipment to Misty Robotics so Misty Robotics can identify your shipment and with a return address. To receive a refund, you must return your Product (and any promotional merchandise supplied with the Product) with an RMA within the 14 days following the day on which you notify Misty Robotics customer support that you desire to return your Product. Unless the Product is faulty or not as described, you will be responsible for all costs associated with returning the Product to us. We will refund the price you paid for the Product plus original delivery cost (up to the value of our Ground delivery option), less the value of any restocking fees, promotional merchandise or discounts you received. We will process the refund due to you as soon as possible and, in any case, within 30 days from the date of receipt by Misty Robotics of the returned Product. The Product is not eligible for a refund after the 30-day period.

7. INCENTIVE PROGRAMS. From time to time Misty Robotics may notify you of referral campaigns (“**Campaigns**”) pursuant to which you may be eligible to earn cash back, discounts, or other incentives (“**Incentives**”) resulting from sales of Misty Robotics Products that conform to the requirements of the Campaign (“**Qualifying Sale**”). Misty Robotics reserves the right to review each sale to determine whether it is a Qualifying Sale, which determination shall be made by Misty Robotics in its sole discretion. In the event that a Qualifying Sale results in an order cancellation or return of the applicable Product, Misty Robotics may require that you return the Incentive we provided for such Qualifying Sale and we may delay shipment of any Products purchased by you until the Incentive is returned. Misty Robotics reserves the right to terminate your orders for Products and to seek any other legal remedies that may be available if it determines that any purported Qualifying Sale is fraudulent.

8. WARRANTIES AND DISCLAIMERS. The Store and all content displayed in connection with the Store is provided on an “as is” and “as available” basis and without warranties of any kind. All Products purchased through the Store are provided on an “as-is” basis unless otherwise noted in the Limited Warranty. With respect to Products, you may choose whether to make a claim under these Terms of Sale or the Limited Warranty or both, but you may not recover twice in respect of the same loss. To initiate a return under the Limited Warranty for your Product, you should contact us at legal@mistyrobotics.com. EXCEPT AS EXPRESSLY STATED IN THE LIMITED WARRANTY, MISTY ROBOTICS DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE STORE OR PRODUCTS, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO ADVICE OR INFORMATION GIVEN BY MISTY ROBOTICS, ITS EMPLOYEES OR AFFILIATES SHALL CREATE A WARRANTY.

9. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN ADDITION TO THE ABOVE WARRANTY DISCLAIMERS, IN NO EVENT WILL (A) MISTY ROBOTICS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY DAMAGES FOR LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THE PRODUCTS, EVEN IF MISTY ROBOTICS KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND (B) MISTY ROBOTICS’ TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THE PRODUCTS, WHETHER IN CONTRACT OR TORT OR OTHERWISE, EXCEED

THE FEES ACTUALLY PAID BY YOU TO MISTY ROBOTICS FOR THE PRODUCT AT ISSUE IN THE PRIOR SIX (6) MONTHS (IF ANY). THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM. MISTY ROBOTICS DISCLAIMS ALL LIABILITY OF ANY KIND OF MISTY ROBOTICS' LICENSORS AND SUPPLIERS.

IT IS THE INTENTION OF YOU AND MISTY ROBOTICS THAT THIS PROVISION BE CONSTRUED BY A COURT AS BEING THE BROADEST LIMITATION OF LIABILITY CONSISTENT WITH APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL, CONSEQUENTIAL OR OTHER TYPES OF DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. NOTHING IN THESE TERMS AND IN PARTICULAR WITHIN THIS "LIMITATION OF LIABILITY" CLAUSE SHALL ATTEMPT TO EXCLUDE LIABILITY THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

10. DATA PROTECTION. By placing an order for Products, you agree and understand that Misty Robotics may store, share, process and use data collected from your order for the purposes of processing the order. Misty Robotics will protect your information in accordance with its Privacy Policy available at <https://www.mistyrobotics.com/legal/privacy-policy/>. Misty Robotics works with other companies that help Misty Robotics provide Products to you, such as freight carriers and credit card processing companies, and Misty Robotics may have to share certain information with these companies for this purpose.

11. ELECTRONIC COMMUNICATIONS. You are communicating with Misty Robotics electronically when you use the Store or send email to Misty Robotics. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. When you order in the Store, we collect and store your email address. From that point forward, your email address may be used to send you information about Misty Robotics' products and services unless you opt-out of such emails using the opt-out link in the emails.

12. GENERAL.

12.1 Modification. Misty Robotics may modify these Terms of Sale at any time. Every time you order Products from Misty Robotics, the Terms of Sale in force at that time will apply.

12.2 Applicable Law and Dispute Resolution. These Terms of Sale shall be governed by the laws of the State of Colorado without giving effect to any conflict of laws principles that may require the application of the law of another jurisdiction. If you believe that Misty Robotics has not adhered to these Terms of Sale, please contact us by e-mail at legal@mistyrobotics.com. We will do our best to address your concerns. If you feel that your complaint has been addressed incompletely, we invite you to let us know for further investigation. If you and Misty Robotics are unable to reach a resolution to the dispute, you and Misty Robotics will settle the dispute exclusively under the rules of the American Arbitration Association (www.adr.org) at its Denver, Colorado office. Any election to arbitrate by one party will be final and binding on the other. YOU UNDERSTAND THAT IF EITHER PARTY ELECTS TO ARBITRATE, NEITHER PARTY WILL HAVE THE RIGHT TO SUE IN COURT OR HAVE A JURY TRIAL. YOU AND MISTY ROBOTICS AGREE THAT ANY ARBITRATION WILL BE LIMITED TO THE DISPUTE BETWEEN MISTY ROBOTICS AND YOU INDIVIDUALLY. YOU ACKNOWLEDGE AND AGREE THAT YOU AND MISTY ROBOTICS ARE EACH WAIVING THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING. Further, unless both you and Misty Robotics otherwise agree in writing, an arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form

of any class or representative proceeding. Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the use of the Services or these Terms of Sale must be brought, if at all, within one year from the accrual of the claim or cause of action or be forever barred. Notwithstanding the foregoing, Misty Robotics may seek injunctive or other equitable relief to protect its confidential information and intellectual property rights or to prevent loss of data or damage to its servers in any court of competent jurisdiction.

12.3 Geographic Restrictions. Although the Store is accessible worldwide, the Products offered on the Store are not designed and tested for use in all countries. If you choose to access the Store and/or use the Products and Subscription Services outside the United States and Canada (each, a “**Target Country**”), as applicable, you do so on your own initiative and you are solely responsible for complying with applicable local laws in your country. To the extent permissible by law, Misty Robotics accepts no responsibility or liability for any damage or loss caused by your access or use of the Store or Products in a non-Target Country.

12.4 Protection of Confidentiality and Intellectual Property Rights. Notwithstanding the foregoing, Misty Robotics may seek injunctive or other equitable relief to protect its confidential information and intellectual property rights or to prevent loss of data or damage to its servers in any court of competent jurisdiction.

12.5 Notifications. Misty Robotics may provide notifications to you as required by law or for marketing or other purposes via (at its option) email to the primary email associated with your Misty Robotics Account, hard copy, or posting of such notice on the Misty Robotics website. Misty Robotics is not responsible for any automatic filtering you or your network provider may apply to email notifications.

12.6 Force Majeure. Misty Robotics will not be liable by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond Misty Robotics’ reasonable control.

12.7 Waiver. The failure of Misty Robotics to enforce any right or provision in these Terms of Sale will not constitute a waiver of such right or provision unless acknowledged and agreed to by Misty Robotics in writing.

12.8 Construction. The headings of Sections of these Terms of Sale are for convenience and are not to be used in interpretation.

12.9 Survivability. Sections 8 through 11 will survive any expiration or termination of these Terms of Sale.

12.10 Contact. Misty Robotics is located in Boulder, Colorado. Any questions, comments or suggestions, including any report of violation of these Terms of Sale should be provided Misty Robotics as follows:

By E-mail: legal@mistyrobotics.com

By Postal Mail: 2540 Frontier Ave., Suite 101, Boulder, CO 80301

12.11 Entire Agreement. These Terms of Sale constitute the entire agreement between you and Misty Robotics with respect to the Services, superseding any prior agreements between you and Misty Robotics. The failure of Misty Robotics to exercise or enforce any right or provision of these Terms of Sale shall not constitute a waiver of such right or provision. If any provision of these Terms of Sale is found by a court of competent jurisdiction to be invalid, you and Misty Robotics nevertheless agree that the court should endeavor to give effect to the parties’ intentions as reflected in the provision, and the other provisions of these Terms of Sale shall remain in full force and effect.