

GENERAL CONDITIONS OF SALE IN FLUENCE SP. Z O.O.

1 SCOPE OF APPLICATION

- 1.1** These General Conditions of Sale (hereinafter referred to as: “**General Conditions**”) apply to any and all sale and/or supply agreements concluded by FLUENCE sp. z o.o., company incorporated under the laws of Poland, ul. Kasprzaka 44/52, 01-224 Warsaw, Poland, entered into the Register of Entrepreneurs of the National Court Register maintained by the District Court for the Capital City of Warsaw in Warsaw, XII Commercial Division of the National Court Register, under KRS no. 0000629831, having NIP no. 5272776154, REGON no. 365029156 (hereinafter referred to as: “**FLUENCE**”), with any buyer, i.e. business person and/or entity purchasing products from FLUENCE.
- 1.2** These General Conditions apply to the agreements concluded in any form, including written form, electronic form, as well as concluded by placing order and its execution.
- 1.3** General Conditions are available on FLUENCE’s website www.fluence.pl so that the buyer can always get acquainted with them, as well as download them, before placing order or concluding individual agreement.
- 1.4** In case of any discrepancies between these General Conditions and the individual agreement concluded by FLUENCE with the buyer, provisions of the agreement shall prevail. In a scope not covered by the agreement, General Conditions shall apply.
- 1.5** By concluding the agreement with FLUENCE or by placing any order for FLUENCE’s products, buyer hereby consents for the application of these General Conditions. Any general conditions of purchase and/or any other buyer’s internal regulations or policies are not binding for FLUENCE, unless parties decide otherwise directly in the agreement.

2 PROCEDURE OF PLACING ORDERS FOR FLUENCE’S PRODUCTS

- 2.1** Orders shall be placed in a written and/or electronic form, on the following FLUENCE’s contact addresses:

FLUENCE sp. z o.o.

ul. Kasprzaka 44/52, 01-224 Warsaw, Poland

e-mail: orders@fluence.pl
- 2.2** In the order buyer shall precisely specify quantity of products covered by the particular order.

- 2.3** Orders always require FLUENCE's e-mail acceptance. FLUENCE issues order acceptance only if it is able to fully execute particular order. If the order can be executed only partially and/or in later term, or if there are any other circumstances preventing from the execution of the order, FLUENCE shall inform the buyer about this so that the buyer can place a modified order. Modified order again shall be accepted by FLUENCE by delivering the new order acceptance.
- 2.4** If FLUENCE issues no order acceptance, the order shall be qualified as not-accepted. Any form of implied order acceptance shall be excluded. Order acceptance shall be issued only in a way specified in section 2.3 above.
- 2.5** FLUENCE is always allowed not to issue order acceptance. FLUENCE bears no responsibility towards the buyer for a lack and/or unavailability of particular products, as well as for impossibility to execute the order within lead time specified in the order.
- 2.6** Upon order acceptance issued by FLUENCE, the order shall be qualified as accepted by both parties. Lead time shall count as of a day of issuance of the order acceptance. However, if the upfront payment is agreed for particular order, the lead time shall count as of a day of the payment in question.

3 DELIVERY OF PRODUCTS

- 3.1** FLUENCE delivers products under EXW rule (Incoterms 2010), from its registered seat in Warsaw, Poland, ul. Kasprzaka 44/52, 01-224 Warsaw, Poland.
- 3.2** FLUENCE delivers Products in unit and collective packaging securing them against decompletion and/or any damage.
- 3.3** Products' technical and legal documentation shall be attached to any delivery.
- 3.4** Buyer hereby agrees and acknowledges that products may be qualified as dual-use items and they can be subject to any limitations, embargos and/or specific rules regarding control of export being in force all over the world. Buyer bears full responsibility for complying with the laws, requirements, limitations and/or embargos in question. Buyer shall indemnify FLUENCE against any and all responsibility resulting from or being likely to result from breaching the provisions in question by the buyer.

4 SUSPENDING EXECUTION OF ORDERS

- 4.1** If the buyer fails to pay FLUENCE a whole remuneration for a previously executed order, FLUENCE is entitled to suspend execution and/or delivery of any following order.
- 4.2** FLUENCE bears no responsibility towards the buyer and/or any third party for execution of its right specified in section 4.1 above.

5 COMPLAINT PROCEDURE

- 5.1** Buyer is obliged to verify products directly after the delivery specified in section 3 above, at FLUENCE's seat. Any inconsistency relating to quantity between products and orders shall be explained immediately.
- 5.2** If the buyer, after collecting products, claims that the delivered products are damaged and/or that they do not comply with the order, buyer shall immediately, but not later than within 10 business days from the day of delivery, prepare a complaint protocol in which it shall specify products' defects and/or damages, as well as any other inconsistency with the order, and deliver it to FLUENCE in a written and/or electronic form.
- 5.3** FLUENCE shall examine the complaint within 30 business days from the day of delivery of complaint protocol, or from a date of delivery of products pursuant to section 5.4 below. Examination of the complaint means that the complaint can be accepted in whole by FLUENCE, it can be denied in whole as unjustified, or it can be partially accepted and partially denied.
- 5.4** If it is required to examine the products, products subject to the complaint shall be sent back to FLUENCE by the buyer, on buyer's risk and cost. Products shall be transferred in original unit and collective packaging.
- 5.5** If FLUENCE accepts the complaint after products' examination, FLUENCE shall indemnify buyer against any and all costs incurred by the buyer in connection with sending products to FLUENCE for examination, or costs of their re-delivery (i.e. further delivery to the buyer), which shall take place pursuant to section 3 of these General Conditions.
- 5.6** If FLUENCE accepts the complaint, FLUENCE shall decide how to eliminate the delivery's inconsistency, in particular how to repair or replace defective products.
- 5.7** Non-preparation of complaint protocol and its non-delivery to FLUENCE in the term specified in section 5.2 above constitutes a confirmation that products comply with the order.
- 5.8** Complaint procedure specified above does not apply to products' defects and/or their inconsistency with the order that have arisen after the delivery and transfer of risk. Complaint procedure also does not apply to FLUENCE's responsibility for products under warranty.

6 WARRANTY

- 6.1** FLUENCE grants a warranty for products.
- 6.2** Warranty document is attached to the invoice and/or any other document confirming the purchase and it contains specific warranty terms.
- 6.3** Statutory warranty for products is hereby excluded.

7 REMUNERATION AND PAYMENTS

- 7.1** In consideration for deliveries of products the buyer shall pay to FLUENCE a remuneration agreed within the procedure of placing orders. To avoid any doubts it is hereby stated that the upfront payment can be agreed for particular order.
- 7.2** Remuneration shall be paid in EUR, on the basis of VAT invoice issued by FLUENCE, within 14 calendar days from the day of its issuance or within any other term agreed under particular order, via bank transfer to FLUENCE's bank account specified on the invoice. Payment is effective as of a day in which remuneration is booked on FLUENCE's bank account.
- 7.3** Buyer hereby authorizes FLUENCE to issue invoices in electronic form without signature.
- 7.4** Remuneration due to FLUENCE, in cases when it results from an applicable provisions of law, shall be increased by VAT tax and/or any other tax, in an amount applicable at the day of invoice's issuance.
- 7.5** In case of any delays in payments of remuneration FLUENCE is entitled to impose statutory interests for each day of delay, regardless from a cause of the delay; it does not affect FLUENCE's right to suspend execution of orders pursuant to section 4 above.

8 LIMITATION OF LIABILITY

- 8.1** FLUENCE bears no responsibility for non-execution or improper execution of its obligations under this General Conditions from reasons beyond FLUENCE's control, including force majeure. Force majeure means any and all events that make the proper execution of FLUENCE's obligations impossible, independent from FLUENCE, unpredictable or impossible to overcome by FLUENCE, such as, in particular, war, act of terrorism, riot, strike, natural disaster, flood, fire, shortages in energy or water, amendments of law etc.
- 8.2** FLUENCE's liability for damages resulting from non-execution or improper execution of its obligations, including any direct and/or indirect liability for products' defects, in any and all cases, is limited to factual damage incurred by the buyer (it means that the liability does not cover lost benefits, lost income, production loss, damage resulting from losing any contract and/or client, and any other indirect, consequential damage or loss other than damage directly relating to products) and it cannot exceed the amount of net remuneration for particular product.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1** Any and all intellectual property rights to FLUENCE's products, including copyrights and/or industrial property rights, belong to FLUENCE.

- 9.2** Buyer shall not violate FLUENCE's intellectual property rights to products, in particular buyer is not allowed to copy, modify, interfere with, decompile, alter, rebuild or playback construction of products, as well as to allow to do so by any other persons or third parties.

10 APPLICABLE LAW AND ARBITRATION

- 10.1** These General Conditions have been construed in accordance with the laws of Poland and the laws of Poland apply to these General Conditions, without principles on conflict of laws. Application of UN Convention on Contracts for the International Sale of Goods, prepared in Vienna on 11th April 1980, shall be excluded.
- 10.2** Any disputes resulting from execution of particular order, including any dispute resulting from the execution of these General Conditions, shall be resolved amicably. If the dispute in question cannot be resolved amicably, it shall be submitted to the Court of Arbitration at the Polish National Chamber of Commerce in Warsaw, Poland (*Krajowa Izba Gospodarcza*), pursuant to the court's regulation being in force at the day of submission of a claim.
- 10.3** If the dispute is submitted to the arbitration pursuant to provision 10.2 above, the case shall be resolved by 3 independent arbitrators nominated in accordance with the court's regulations, and the proceedings will be held in English language.

11 FINAL PROVISIONS

- 11.1** These General Conditions shall apply as of 02.2019.
- 11.2** These General Conditions can be amended by FLUENCE from time to time. In case of any order placed by the buyer and accepted by FLUENCE before the amendment, previous version of the General Conditions shall apply to this particular order.