

**FLUENCE SP. Z O.O.****LIMITED WARRANTY TERMS AND CONDITIONS****1 SCOPE OF APPLICATION**

- 1.1** These limited warranty terms and conditions (hereinafter referred to as the “**Warranty**”) shall apply to all and any product(s) manufactured by FLUENCE SPÓŁKA Z OGRANICZONA ODPOWIEDZIALNOSCIA having its business premises at Warsaw, Poland, 01-224, at ul. Kasprzaka 44/52, with National Court Register number (KRS): 0000629831 and Polish tax identification number (NIP): 5272776154 (hereinafter referred to as the “**FLUENCE**”)
- 1.2** The Warranty is granted to any corporate entity who purchases any of FLUENCE’s product(s) regardless to its geographical location and / or legal form (hereinafter referred to as the “**BUYER**”) and is non-transferable without FLUENCE’S prior written consent.
- 1.3** The Warranty shall apply where the given product(s) was(were) bought either from FLUENCE or its official partner(s) and / or distributor(s).
- (hereinafter the Buyer and the FLUENCE referred collectively as the “**Parties**”)
- 1.4** This Warranty is publicly available at FLUENCE website, which can be accessed at (<https://fluence.technology>).
- 1.5** Statutory Warranty for Defects (*Rękojmia* pursuant to the article 556 and following ones of the Polish Civil Code) is excluded and shall not apply to any of FLUENCE’s products.
- 1.6** Under no circumstances shall the Buyer’s internal warranty and / or supply policies and / or regulations be binding upon FLUENCE, its affiliates and subsidiaries and in the absence of any prior written arrangement(s) FLUENCE’s Warranty shall render void and replace all other clauses set forth by any Buyers internal warranty and / or supply policies and / or regulations.
- 1.7** The Warranty is granted for the period of 12 months. Non-linear crystals and optics are designated consumables and are subject to a limited Warranty period of 90 days.

- 1.8** The Warranty starts upon the date of product's delivery. For product(s) that include installation the Warranty period starts upon the issuance of the installation report or a month after the delivery, whichever occurs first.
- 1.9** The Warranty is of a global nature, thus the rights resulting from the Warranty are in force irrespective of the geographical area in which FLUENCE's product(s) is(are) used.
- 1.10** The Warranty applies only to product(s) whose consideration(s) was(were) fully paid. Failure to pay full amount expected for a particular product(s) translates to a forfeiture of any and all rights guaranteed under this warranty .
- 1.11** Certain products may require installation by a FLUENCE certified engineer, such products are usually outlined in the quotation. A part of FLUENCE's installation service(s) includes provision of a one time onsite training being given to a three individuals designated by the Buyer, with one of them being designated to oversee the handling of the equipment, such individual shall be termed the "Super User" (hereinafter referred to as the "**Super User**"). One additional refresher training session shall be provided to the Super User via the internet. All cost(s) and / or expense(s) associated with FLUENCE's extra onsite service(s), including additional Super User training(s), and / or travel(s) are not included in the product(s) price(s).

Where given product(s) require FLUENCE's installation service(s) this Warranty shall only apply provided that:

- 1.11.1** the product(s) was(were) installed by a FLUENCE certified engineer(s); and
- 1.11.2** the installed FLUENCEs product(s) was(were) not (re)moved from the facility of its installation; and
- 1.11.3** the Super User is and remains the foremost manager with respect to the product(s) operation(s).
- 1.12** Unless Parties agreed otherwise this Warranty is exclusive and *in lieu* of all other FLUENCES assurances to its product(s) quality and suitability shall be the Buyer's sole remedy and FLUENCE sole liability.

## **2 SCOPE OF WARRANTY**

- 2.1** FLUENCE guarantees that its product(s) is(are) free from defect(s) - in material and workmanship respect(s) - and shall work according to its prescribed performance. This Warranty shall cover internal defects only.

- 2.2** Internal defects of FLUENCE's product(s) revealed within the Warranty period shall be repaired or replaced. Warranty does not cover any non-internal products defects and / or damage(s) that arose after the delivery of the product(s) and / or within the period of transportation.
- 2.3** This Warranty does not cover product(s):
- 2.3.1** Defect(s) that is(are) a result of product(s) improper use;
  - 2.3.2** Mechanical defect(s) and / or damage(s) arisen due to their improper installation, configuration, use and / or any other actions not in compliance with the delivered manual and / or habit(s) of using specific kind of product(s);
  - 2.3.3** Defects resulting from the product(s) improper connection to the other device(s), in particular not being in compliance with the product(s) manual and / or parameter(s), as well as defect(s) resulting from damages and or disruptions or from other devices properly connected with FLUENCE product(s);
  - 2.3.4** Defects resulting from extraordinary external occurrence whose appearance could not be foreseen, e.g.: floods, fire(s), lightning storm(s), war(s), improper voltage supply, etc.;
  - 2.3.5** That was(were) interfered with in any way, in particular: reconfiguration(s), repair(s), unauthorized design change(s), modification(s) and / or adjustment(s);
  - 2.3.6** With damaged and / or unreadable serial numbers or seal(s);
  - 2.3.7** Defect(s) caused by the use of incorrect and / or unoriginal and / or operating elements other than those recommended by FLUENCE;
  - 2.3.8** Defect(s) resulting from a fault arising from the Buyers usage and / or negligence;
  - 2.3.9** Malfunction(s) resulting from a conflict and / or incompatibility between products and equipment which impairs product(s) continuous work in accordance with their intended purpose;
  - 2.3.10** For Product(s) consumables – section 1.7 shall apply;
  - 2.3.11** Software components(s), if applicable.
- 2.4** Warranty does not cover accessories attached to product(s), unit and collective packaging(s) and normal wear and tear of the product(s) component(s).

### 3 PERFORMING THE WARRANTY

**3.1** Fluence reserves the right to execute the warranty in a manner of its choice by either:

**3.1.1** repairing the defective product(s); or

**3.1.2** replacing the defective product(s).

**3.2** Where the Buyer reveals a given defect(s) which is(are) covered by the Warranty (s)he shall as soon as possible, but not later than within 10 business days upon revealing the defect(s), prepare a complaint note specifying product(s) defect(s). The complaint note shall be delivered to FLUENCE in a written and / or electronic form. Respectively, to contact details below:

FLUENCE sp. z o.o., ul. Kasprzaka 44/52, 01-224 Warsaw, Poland

[support@fluence.technology](mailto:support@fluence.technology)

**3.3** FLUENCE shall examine the complaint note within 30 business days upon the day of defected product(s) complaint note delivery. Fluence reserves the right to prolong the deadline of 30 days for the examination of the product(s) according to the section 3.5 below.

**3.4** Fluence reserves the right upon examination of complaint to accept, partially accept or reject the given complaint.

**3.5** Whereas it is required to examine the defected product(s) the examination shall be executed, according to the FLUENCE choice, by:

**3.5.1** remote examination over the internet connection; and / or

**3.5.2** examination at the Buyer's premises being made by the FLUENCE engineer(s); and / or

**3.5.3** examination at the FLUENCE's premises.

**3.6** For the examination purpose(s), the Buyer shall cooperate with FLUENCE and for particular instances shall:

**3.6.1** provide the internet access and allow the remote connection to the computer being connected to the product(s) being a subject to the complaint; and / or

- 3.6.2 allow FLUENCE engineer(s) to access the facility where the product(s) being a subject to the complaint is(are) installed; and / or
- 3.6.3 send the product(s) being a subject to the complaint back to FLUENCE on Buyer's cost via mean of delivery agreed with FLUENCE.
- 3.7 As a pre-condition for the complaint(s) validity, where the product(s) examination requires shipment to the FLUENCEs premises, the Buyer before shipping the product(s) shall firstly apply for the return material authorization (the "RMA") to FLUENCE. The RMA application shall in particular include the POA number, date of receiving the product(s) and all other identifying numbers being applicable (such as invoice number, product(s) number, etc.). Issued RMA shall *amongst other things* include the respective advice for the Buyer about the packing and shipping the product(s) being a subject to the complaint. Fluence reserves the right to reject the complaint for Buyers non-compliance to RMA being issued and FLUENCE shall not be liable for all and any damages caused.
- 3.8 Subject to the Buyer's compliance with the RMA being issued; where FLUENCE accepts the given complaint it shall indemnify and / or reimburse the Buyer against all and any reasonable and justified cost(s) incurred in connection with sending the product(s) to FLUENCE premises for examination and / or costs of its(their) re-delivery (i.e. further delivery to the Buyer).
- 3.9 Where FLUENCE accepts the complaint it shall decide how to eliminate product's defect(s), in particular how to repair or replace defective product(s).
- 3.10 Whereas FLUENCE accepts the complaint and replaces the product(s) the Warranty period shall start running (once more) upon the time of delivery of a new product(s). In all other cases, the Warranty period shall be extended by the period in which due to defect(s) the Buyer was not able to use the product(s) in compliance with its intended purpose.

#### 4 LIMITATION OF LIABILITY

- 4.1 FLUENCE's liability for damages resulting from improper or non-performance of its product(s) including any direct and / or indirect liability in any and all cases shall be limited to factual damage incurred by the Buyer. Fluence's liability under any circumstance shall not extend to the loss of benefits, loss of income, loss of production, damage resulting from losing any contract and / or client, and any other indirect, consequential damage or loss other than the damage directly related to FLUENCE product(s) and it cannot exceed the amount of net remuneration of the FLUENCE.

## 5 APPLICABLE LAW AND ARBITRATION

- 5.1 This Warranty was created in accordance with the Law of Poland and the Polish Law shall be applied.
- 5.2 Application of UN Convention on Contracts for the International Sale of Goods prepared in Vienna on 11th April 1980 shall be excluded and does not apply in any circumstance.
- 5.3 In the event of any dispute the Parties shall first attempt to resolve such dispute by an amicable settlement before it is submitted to the Court of Arbitration at the Polish National Chamber of Commerce in Warsaw, Poland (*Krajowa Izba Gospodarcza*).
- 5.4 Where the dispute is submitted to the arbitration pursuant to the provision 5.3 above the dispute shall be heard by 3 independent arbitrators nominated in accordance with the court's regulations and the proceedings shall be held in English language.

## 6 FINAL PROVISIONS

- 6.1 This Warranty Terms and Conditions shall apply as of 15.01.2021.
- 6.2 FLUENCE reserves the right to amend the Warranty. Applicable Warranty is the one binding at the date of conclusion of the sales contract.
- 6.3 If all or any provision of this Warranty is or becomes invalid, void, or unenforceable, all other provisions, including the remaining part of the invalid, void, or unenforceable provision, shall remain fully effective and enforceable. The Parties hereby agree to immediately replace the invalid, void, or unenforceable provision (or its invalid, void or unenforceable part) with another one in such a way that it fully meets the economic purpose of the replaced provision (or its part thereof).