

**FLUENCE SP. Z O.O.****GENERAL TERMS AND CONDITIONS OF SALE****1 SCOPE OF APPLICATION**

**1.1** These Terms and Conditions (hereinafter referred to as the **“T&C”** or the **“T&C of Sale”**) shall apply to any and all sale agreements(s) being concluded by FLUENCE SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ having its business premises at Warsaw, Poland, 01-217, at ul. Kolejowa 5/7, with National Court Register number (KRS): 0000629831 and Polish tax identification number (NIP): 5272776154 (hereinafter referred to as the **“Seller”**, or the **“Vendor”**, or **“FLUENCE”**)

and

any entity regardless of its geographical location and / or legal form in which the subject matter of the agreement is the sale of the FLUENCE product(s) (hereinafter referred to as the **“Buying Party”**, or the **“Buyer”**).

Both (hereinafter the Buyer and the Seller referred collectively as the **“Parties”**).

**1.2** By concluding the agreement(s) in any form the Buying Party hereby acknowledges and accepts the T&C of Sale. The Buying Party shall be deemed to have acknowledged and consented to the Current T&C of Sale upon placing the order(s) and such order upon being received by the seller shall imply the acceptance of the Current T&C of Sale by the Buying party without exception(s).

**1.3** This T&C shall apply to any and all agreement(s) concluded in any form, in particular; written and electronic form(s).

**1.4** This T&C is publicly available on the FLUENCE website which can be accessed at (<https://fluence.technology>).

**1.5** In the unlikely event of discrepancies between the T&C and any individual agreements and / or negotiations and / or concluded contractual provisions. The terms of the given contract shall prevail. The T&C shall apply to the extent not regulated by such contract

- 1.6** Under no circumstances shall the Buyer's internal policies and / or regulations be of binding effect upon FLUENCE, its affiliates and subsidiaries. In the absence of any prior written arrangement(s) the T&C of Sale shall render void and replace all other clauses set forth by any Buyers internal policies and / or regulations.

## **2 PLACING ORDERS**

- 2.1** Order Placement(s) shall be made either in written and / or electronic form(s). To contact details listed below:

FLUENCE sp. z o.o. ul. Kolejowa 5/7, 01-217 Warsaw, Poland

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

- 2.2** The Buyer shall provide a precise and exact number and description of products per given order.
- 2.3** Acceptance of any given order shall be given via FLUENCE's purchase order(s) acceptance (the "POA") sent via email. The FLUENCE shall issue POA's only where it is able to provide the exact given order(s). Where given order(s) cannot be provided exactly and / or within the given timeframes and / or there are circumstances preventing Vendor from being able to provide the order(s), Vendor shall inform the Buying Party about given obstacles so the Buying Party can modify its order. Modified order shall be considered as the new one and shall out previous orders – new POA shall apply to the new order accordingly.
- 2.4** Where FLUENCE does not issue the POA, the given order shall be qualified as not-accepted. Implied acceptance of orders is hereby excluded.
- 2.5** FLUENCEs product(s) is(are) manufactured for given order(s) being placed. Manufacturing time of particular product(s) alongside the time of its (their) preparation for shipment shall be termed the "Lead Time".
- 2.6** FLUENCE reserves the right not to issue a POA and shall bear no responsibility towards the Buyer in respect to the absence of and / or unavailability of particular product(s), and / or for impossibility to provide the order within Lead Time specified in the order.

- 2.7** Upon the order(s) POA issuance, the order shall be considered as accepted by both Parties. Lead Time shall commence a day after issuance of the order(s) acceptance. Where an advance payment is agreed for the particular order(s), the lead Time shall start at the date of clearing the payment.

### **3 PRODUCTS DELIVERY**

- 3.1** Where not agreed otherwise FLUENCE delivers its product(s) under EXW rule (Incoterms 2020) from its registered office in Warsaw, Poland.
- 3.2** FLUENCE delivers its product(s) in a secured packaging(s).
- 3.3** Products' technical and legal documentation shall be attached to the product(s).
- 3.4** The Buyer hereby acknowledges and agrees that the FLUENCE product(s) may be qualified as being dual-use items and for this reason can be a subject to limitation(s) and / or embargoes and / or export control laws.
- 3.5** Buying Party shall bear full responsibility for the compliance with the relevant and applicable law(s) and shall indemnify FLUENCE against any and all responsibility resulting and / or being likely to result from breaching of the law(s) in question.

### **4 SUSPENDING PROVISION OF THE ORDER(S)**

- 4.1** Where the Buying Party does not clear the payment(s) being due to the Seller, the Seller reserves the right to suspend the provision and / or the delivery of the order(s) not paid for.
- 4.2** FLUENCE shall bear no responsibility towards the Buyer and / or any third party for the availing itself of its right specified in section 4.1 above.

### **5 COMPLAINT PROCEDURE**

- 5.1** Buyer shall be obliged to verify the product(s) being delivered in every respect (meaning quantity and quality) as soon as the delivery is completed. Any quantity related inaccuracies shall be explained immediately.

- 5.2** Where the Buying Party claims that the delivered product(s) is(are) damaged and / or not compliant with the order, the Buying Party shall immediately and in any case not later than within 10 business days from the delivery date prepare a complaint protocol in which s(he) shall specify product(s) defect(s) and / or damages and / or other kind of order non-compliance. Complaint protocol shall be delivered to FLUENCE in the written and / or electronic form.
- 5.3** FLUENCE shall examine the complaint protocol against the given order within 30 business days upon the delivery date of a given protocol or upon the delivery date of the given product(s), pursuant to the section 5.5 below.
- 5.4** FLUENCE reserves the right upon complaint examination to accept, partially accept or reject the given complaint.
- 5.5** Where it is required for examination the product(s) being a subject to the complaint shall be sent back by the Buying Party to FLUENCE at the Buyer's risk and cost.
- 5.6** As a pre-condition for the complaint(s) resolution, where the product(s) examination requires shipment to the FLUENCEs premises, the Buying Party before shipping the product(s) shall first apply for the return material authorization (the "RMA") to the Seller. 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. Buyers non-compliance to RMA being issued shall result in rejection of the given complaint and FLUENCE shall not be held responsible for all and any damages caused.
- 5.7** 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).
- 5.8** Where FLUENCE accepts the given complaint, FLUENCE reserves the right to decide how to eliminate the defect(s) of the given order, in particular it shall decide whether the given product shall be repaired or replaced with the new one.

**5.9** Where the complaint protocol was not prepared and / or not delivered to FLUENCE (per the terms specified by the section 5.2 above) it shall be assumed that the given product(s) is compliant with the order.

**5.10** The complaint procedure specified by the sections of the current paragraph shall not apply to:

5.9.1. the product(s) being damaged and / or lost while being transported – in such instances, the ownership risk transfer shall be assumed;

5.9.2. product(s) warranty.

## **6 WARRANTY**

**6.1** FLUENCE grants a warranty for its products.

**6.2** Warranty Terms & Conditions forms a separate document which shall be attached to the product(s) and / or products invoice and / or product(s) manual and / or other document(s) certifying that given purchase was made.

**6.3** Warranty Terms & Conditions are publicly available at the FLUENCE website aforementioned.

**6.4** Statutory Warranty for Defects (Rękojmia pursuant to the article 556 and following ones of the Polish Civil Code) shall hereby be excluded.

**6.5** Under no circumstances shall the Buyer's internal warranty and / or supply policies and / or regulations be binding upon FLUENCE and unless there is(are) any prior written arrangement(s) the FLUENCE's Warranty Terms & Conditions shall render void and replace all other clauses set forth by any Buyers internal warranty and / or supply policies and / or regulations.

## **7 LICENSE**

**7.1** Where FLUENCE products includes a software component(s) FLUENCE grants a license to use that software.

**7.2** License Terms & Conditions forms a separate document which shall be attached to the product(s) and / or products invoice and / or product(s) manual and / or other document(s) certifying that given purchase was made.

## 8 REMUNERATION AND PAYMENTS

- 8.1** The Buyer is obliged to pay the remuneration stated within the order(s) placing procedure. For the avoidance of doubts an advance payment(s) for particular order(s) shall be allowed.
- 8.2** Remuneration based on the issued invoice shall be paid in EUR currency. Unless agreed otherwise, the payment shall be cleared within 14 days commencing at the date of issuing the invoice via bank transfer to the FLUENCE's bank account specified within the invoice. Parties shall consider the date of payment as the date of debiting the given amount at the FLUENCE bank account.
- 8.3** The Buyer hereby authorises FLUENCE to issue invoice(s) in the electronic form and without a signature.
- 8.4** If applicable, the remuneration being due to FLUENCE, in cases resulting from the applicable provisions of law(s), shall be inclusive of VAT and / or any other tax(es) in the amount being applicable at the day of issuing the given invoice.
- 8.5** In case of any delay(s) in remuneration payment(s) FLUENCE shall be entitled to accrue an interest at a statutory interest(s) rate for each day of the delay regardless to its cause. The interest imposed shall not affect FLUENCE's right to suspend provision of the given order(s) pursuant to the section 4 above.

## 9 LIMITATION OF LIABILITY

- 9.1** FLUENCE shall not be held liable for improper/part performance or non-performance of the T&C if such improper or non-performance is a result of a force majeure. Force majeure shall be deemed as an extraordinary external occurrence whose appearance could not be foreseen at the time of placing given order(s) or which the Party affected by the force majeure could not prevent. Within the meaning of the T&C the force majeure means in particular but shall not be limited to act(s) or omission(s) of the State Authorities, strike(s), lockout(s), war(s), blockade(s), uprising(s), riot(s), epidemic(s), earthquake(s), fire(s) and flood(s).

**9.2** FLUENCE's liability for damages resulting from improper or non-performance to the T&C including any direct and / or indirect liability for products' defects in any and all cases shall be limited to factual damage incurred by the Buyer. This shall mean that the liability does not extend to 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 Selling Party.

## **10 INSTALLATION TRAINING**

**10.1** Certain products may require installation by a FLUENCE certified engineer, such products are always outlined in the individual quotations. In such instances a part of FLUENCE's installation service(s) includes the provision of a one-time, onsite training given to up to three individuals of the Buyers designation. A single person from the three designated by the Buyer shall be chosen by the Buyer to oversee the handling of the equipment, such individual shall be 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.

**10.2** Cost(s) and / or expense(s) of 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).

## **11 INTELLECTUAL PROPERTY RIGHTS**

**11.1** All and any intellectual property rights to FLUENCE's products are and shall remain the exclusive property of the Seller. The Intellectual Property Rights shall mean all intellectual property rights, in particular: copyrights, patents, related rights, industrial property rights, database rights, rights to trade names, company names and other distinctive signs, data exclusivity rights and all other exclusive rights having an effect being similar or equivalent to the effects.

**11.2** Buying FLUENCE products does not constitute a transfer of any Intellectual Property Rights being the property of FLUENCE.

**11.3** The Buyer shall not violate FLUENCE's intellectual property rights; in particular (s)he is not allowed to copy, modify, interfere with, decompile, alter, rebuild or playback construction of products. The Buyer by himself and / or in arrangement and / or by a third party(ies) is also not allowed to conduct any reverse or backwards engineering activities on FLUENCE products.

## **12 APPLICABLE LAW AND ARBITRATION**

**12.1** These T&C of Sale were created in accordance with the Law of Poland and the Polish Law shall be applied.

**12.2** The 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.

**12.3** In the event of any occurred dispute the Parties shall attempt to resolve the occurred 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).

**12.4** Whereas the dispute is submitted to the arbitration pursuant to the provision 12.3 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.

## **13 FINAL PROVISIONS**

**13.1** These T&C of Sale shall apply as of 01.09.2021.

**13.2** FLUENCE reserves the right to amend the T&C of Sale. Applicable T&C version is the one binding at the date of issuing the Sellers acceptance – provisions of section 2 shall apply accordingly.

**13.3** If all or any provision of this T&C 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).