

**1. DEFINITIONS AND INTERPRETATION****1.1** In these conditions the following words shall have the following meanings:

"Conditions" means the terms and conditions set out in this document as amended from time to time in accordance with clause 13.9;

"Contract" shall mean the contract between the Seller and the Customer for the purchase of the Goods and/or supply of Services consisting of the Quote, related PO, these Conditions and any documents incorporated herein;

"Customer" shall mean the person, firm or company purchasing the Goods and/or Services from the Seller;

"Fees" means the fees and charges in respect of the Services as set out in the Quote;

"Goods" shall mean the articles that the Customer agrees to buy from the Seller, as set out in the Quote;

"Prices" means the prices for the Goods as set out in the Quote.

"Product Manufacturer" shall mean the producer, manufacturer, or fabricator of Goods where Flow Technology Limited is acting as a Goods reseller or distribution company.

"Quote" means the quotation and proposal document issued by the Seller to Customer in respect of the Goods and Services requested by Customer;

"Seller" shall mean Flow Technology Limited or any affiliate thereof;

"Services" shall mean any service or facility provided by the Seller to the Customer at Customer's request including but not limited to design, implementation and/or operation solutions and servicing which are more particularly described in the relevant Quote;

"Specifications" means any specification for the Goods and/or Services, including any related plans and drawings, provided by Seller and/or the Product Manufacturer and as set forth in the relevant Quote;

**1.2** In these Conditions, the following rules apply: **(a)** the headings in these Conditions are inserted for convenience only and shall not affect its construction. **(b)** A reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it. **(c)** Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders. **(d)** Unless the context otherwise requires, words in the singular include the plural and words in the plural include the singular. **(e)** Any schedule to these Conditions forms part of (and is incorporated into) these Conditions. **(f)** Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

**2. GENERAL**

**2.1** For the avoidance of doubt, any terms and conditions attached to a purchase order or any Customer documentation shall not apply to the provision of the Goods and/or Services and this Contract shall always take precedence over such terms and conditions.

**2.2** Any typographical, clerical or other error of omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without liability on the part of the Seller.

**3. QUOTE AND ORDERS**

**3.1** The Customer may place an order with the Seller for the purchase of the Goods and/or the supply of Services and such order will be deemed for all purposes to be an offer to purchase the Goods and/or Services specified in the Quote and shall be subject to these Conditions. The Seller shall be entitled at its sole discretion at any time to accept or reject all or part only of such offer for any reason whatsoever and it shall not be bound to give the Customer any reasons for doing so. The Customer shall be deemed to have accepted the Quote and this Contract shall enter into force and effect when the Customer issues a purchase order to Seller.

**3.2** Any samples, drawings, descriptive matter or advertising produced by us and any descriptions or illustrations contained in our website, catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. All particulars (such as sizes, weights, capacities, dimensions and measurements) indicated therein are an approximation and slight variations may exist. They shall not form part of the Contract or have any contractual force.

**3.3** A Quote shall only be valid for a period of 30 days from its date of issue.

**4. RESERVATION OF OWNERSHIP**

**4.1** The title in the Goods supplied by the Seller to the Customer shall remain the sole and absolute property of the Seller until full payment has been received by the Seller for all Goods supplied at any time by the Seller to the Customer.

**4.2** Until title in the Goods passes to the Customer, the Customer shall hold the Goods as the Seller's fiduciary agent and bailee and shall store them upon its premises separately from its own Goods or those of any other person and in the manner, which makes them readily identifiable as the Goods of the Seller.

**4.3** The Customer shall, while in possession of any Goods the property of the Seller, properly protect and insure the Goods and any insurance monies received by the Customer on foot of any insurance policy in respect of any damage, deterioration, loss or destruction of the Goods shall be paid over to the Seller and pending such payments over shall be held in trust by the Customer for the Seller.

## CONDITIONS OF SALE

- 4.4 The Customer, while in possession of the Goods the property of the Seller, may in the ordinary course of its business sell or dispose of the Goods. The Customer insofar as it is empowered to resell or dispose of the Goods as aforesaid sells as principal in relation to the sub-purchaser and has no right to commit the Seller to any contractual relationship with or liability to any third party, but as between the Seller and the Customer the latter shall sell as fiduciary agent. Any resale or disposal of the Goods shall be at a price not less than the price payable by the Customer to the Seller in respect of the Goods.
- 4.5 The Customer shall hold so much of the proceeds of the sale of any of the Goods as equals the price payable to the Customer to the Seller in respect of the Goods (hereinafter referred to as "the proceeds of the sale") on trust for the Seller, less any monies already paid in respect of those Goods and shall keep the proceeds of sale separate from its own monies and shall not pay the same of any part thereof to an overdrawn bank account. The Customer shall open a fiduciary account with its bankers and advise them that it holds the proceeds of sale of the Goods as trustee for the Seller and that not until payment to the Seller of the price of the Goods shall it be entitled to transfer any profit thereon to any other account. The Seller shall be entitled to any interest earned on the fiduciary account.
- 4.6 The Seller shall have power to appropriate payments to such Goods on account as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary.
- 4.7 The Customer shall be at liberty to incorporate the Goods into another product or chattel subject to the condition that if the Seller's Goods are admixed or united in any way with those of the Customer of any other person, the product of such admixture or unison shall be deemed for all purposes to be owned in common by the Seller with the Customer of that other person.
- 4.8 The Customer's right to possession of the Goods shall cease at whichever is the earliest of the following dates:
- (a) on the expiration of the agreed period of credit, if any.
  - (b) if the Customer, not being a company, commits an act of bankruptcy or causes a meeting of or makes any arrangement or composition with its creditors or does anything which would entitle a petition for a bankruptcy order to be made.
  - (c) if the Customer, being a company, does anything or fails to do anything which would entitle a receiver to take possession of any assets or which would entitle any person to present a petition for winding-up or apply for the appointment of an examiner or causes a meeting of or makes any arrangement or composition with its creditors.
- 4.9 The Seller may at any time revoke the Customer's power of sale by notice to the Customer and may give notice to the Customer requiring the Customer to re-deliver forthwith, at the Customer's expense, any Goods supplied by the Seller where the Customer is in default of payment or on dishonour of any bill of exchange or other negotiable instrument notwithstanding that the Seller may have negotiated such bill of exchange or negotiable instrument and received value therefor.
- 4.10 The Seller may, through any servant, agent or contractor authorised by it, for the purpose of recovery of its Goods enter upon any premises where they are stored, or they are reasonably thought to be stored and may repossess the same.
- 4.11 The credit terms granted by the provisions of this Contract are without prejudice to anything contained in clause 4 hereof and the Customer acknowledges that the said credit does not in any way derogate from its status as fiduciary agent and bailee.
- 5. TRANSFER OF RISK**  
Notwithstanding the provisions of Clause 4 hereof, risk in the Goods shall pass to Customer on delivery in accordance with clause 6.
- 6. DELIVERY OF GOODS**
- 6.1 Delivery of the Goods shall be made by the Seller in accordance with Incoterm 2020 DAP to the Customer's premises or nominated delivery address.
- 6.2 All delivery dates for Goods mentioned by the Seller are approximate only and not of contractual effect. The Seller shall not have any liability in respect of any delay in delivery for whatever reason. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Customer. All Goods are sold subject to availability of stocks.
- 6.3 The Seller may complete an order for the Goods by instalments and invoice the instalments separately. Payment of any instalment due is a condition precedent to starting further deliveries. The Seller shall have the right to terminate the Contract when any instalments or payment is in arrears. The losses of the Seller resulting from withholding deliveries of Goods due to non-payment by the Customer shall be refunded by the Customer, but the Customer shall not have any entitlement to compensation from the Seller in respect of such termination or withholding.
- 6.4 If the Customer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for the delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- (a) store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage;
  - (b) or sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) retain for its own account the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

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- 6.5 The Customer shall be responsible for checking all deliveries of the Goods. No claim for shortages or damages or for the quantity or conditions of the Goods will be entertained by the Seller unless submitted in writing to the Seller within 7 days of the date of evidence satisfactory to the Seller.

### 7. DELIVERY OF SERVICES

- 7.1 The Seller shall provide the Services to the Customer in accordance with the Services Specification in all material respects.
- 7.2 The Seller shall use all reasonable endeavours to meet any performance dates for the Services specified in the Services Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. The Seller shall not have any liability in respect of any delay in delivery of the Services for whatever reason.
- 7.3 The Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Seller shall notify the Customer in any such event.
- 7.4 The Customer shall:
- (a) co-operate with the Seller in all matters relating to the Services;
  - (b) provide the Seller, its employees, agents, consultants and subcontractors, with safe access as reasonably required by the Seller to provide the Services and take all reasonable steps to ensure the health and safety of the Seller personnel while at the Customer's premises, office accommodation and other facilities;
  - (c) provide the Seller with such information and materials as the Seller may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
  - (d) prepare the Customer's premises for the supply of the Services;
  - (e) obtain and maintain all necessary licenses, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - (f) keep and maintain all materials, equipment, documents and other property of the Seller ("Seller Materials") at the Customer's premises in safe custody at its own risk, maintain the Seller Materials in good condition until returned to the Seller, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorisation.
- 7.5 If Seller is prevented or delayed in carrying out the Services due to any act or inaction of Customer and or its employees, agents or contractors, Customer shall discharge Sellers costs for additional time incurred in carrying out the Services.

### 8. PRICES AND PAYMENT

- 8.1 The Seller shall deliver to the Customer as soon as possible after issue of Goods from Product Manufacturer premises or the Sellers premises, whichever is applicable, an invoice stating the type and quantity of the Goods contained in the delivery and the price at the time of the delivery that the Customer is bound to pay therefor.

- 8.2 The Seller shall invoice the Customer at regular intervals as agreed with the Customer before services are commenced and provided.
- 8.3 The Prices and Fees for the Goods and Services are specified in the Quote. Prices and Fees are exclusive of all value-added and other taxes, tariffs and duties which shall be added to the invoice(s) at the appropriate rate and paid by the Customer. All amounts due are non-cancellable and non-refundable and shall be paid in full without any set-off, counterclaim, deduction or withholding.
- 8.4 Seller shall issue invoices in accordance with the payment schedule agreed in the Quote. Customer shall pay invoices within thirty (30) days of the date of the invoice.
- 8.5 Customer shall reimburse Seller for any travel, accommodation and subsistence expenses incurred by Seller provided that such expenses have been agreed with Customer in advance.
- 8.6 Additional Fees and Pricing may be incurred for Services, such as equipment servicing or general maintenance services, where upon inspection by Seller it becomes apparent additional spare parts, Goods, labour and site visits will be required to provide the Services. Seller will notify Customer upon discovery of any such issues and provide an up to date estimate of Fees and Prices and the Quote shall be deemed amended accordingly with respect to the revised Fees and Pricing.
- 8.7 Should Customer have a bona fide dispute in respect of all or any part of any invoice(s) it will notify Seller of the nature of that dispute in writing within five days of receipt of the invoice giving the relevant details. Following any such notice, Customer shall pay the undisputed amount(s) and may withhold payment of the amount in dispute without interest. The parties will cooperate in good faith to resolve any such dispute as amicably and promptly as possible and on settlement of the dispute Customer shall discharge all agreed amounts within five (5) days.
- 8.8 If Seller has not received payment of undisputed Fees and/or Prices within fifteen (15) days after the due date in accordance with the payment terms, and without prejudice to any other rights and remedies of Company, Company may, subject to providing a further fifteen (15) days' written notice and without liability to Customer, suspend provision of the Services and delivery of the Goods and Company shall be under no obligation to provide any or all of the Goods and Services while the invoice(s) concerned remain unpaid. In addition, interest shall accrue on a daily basis on such outstanding amounts at an annual rate equal to four (4) percentage points above the European Central Bank's reference rate or if such rate shall exceed any applicable permissible legal interest rate, then at the highest legally permissible rate, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.9 The Seller reserves the right at any time to revoke the terms of credit of the Customer.

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8.10 The Seller shall be entitled to charge the Customer with an amount equal to all costs and expenses (whether incurred pursuant to the issue of legal proceedings or not) incurred by the Seller in any way connected with the collection of monies from the Customer which have not been paid when due. The amount of such costs and expenses will be submitted to the Customer by the statement and thereupon these costs and expenses shall immediately become due to the Seller.

### 9. WARRANTY

9.1 Each party warrants that upon its execution: (i) this Contract will not materially violate any term or condition of any agreement that such Party has with any third-party; (ii) that the representatives executing the Contract are authorised to bind such Party to the terms and conditions hereof; and (iii) it has the full right, power and authority and all necessary licences and consents to enter into and perform this Contract.

9.2 Goods Warranty. The Seller warrants that the Goods shall, at the time of delivery, be free from defects in materials and workmanship, and shall conform to the Specifications in all material respects. Where the Seller is acting as a reseller or distributor of Goods, Seller's warranty shall be limited to the Product Manufacturer's warranty only in respect of the relevant Goods and the warranty period shall be limited to twelve (12) months from shipment from the Product Manufacturer's premises ("**Goods Warranty Period**").

9.3 During the Goods Warranty Period, if the Goods fail to meet the warranty in clause 9.2, Customer shall promptly notify Seller in writing, specifying the nature of the defect or failure. Seller shall, at its option, either:

- (a) repair the defective Goods at no additional cost to the Customer; or
- (b) replace the defective Goods with new or refurbished Goods of equivalent quality.

9.4 Services Warranty. Seller warrants that it shall provide the Services with reasonable skill and care and that the Services shall conform to the Specifications (if any) in all material respects. If the Services fail to meet this warranty, the following remedies and warranty periods shall apply:

- (a) where Seller is providing Services such as equipment servicing or general maintenance services, the warranty is limited to only the equipment or spare parts supplied or replaced during such Services, which shall be subject to clauses 9.2 and 9.3. Customer acknowledges and agrees that as per clause 8.6 during the provision of these Services, additional issues may arise or be discovered in respect of the equipment and machinery Seller is servicing that may require further labour and parts to be provided by Seller, and any such issues shall not be considered a breach of the warranty in this clause 9.5;
- (b) where the Seller is providing general mechanical site services involving fabrication, installation or other work on Customer's site, the warranty period shall be for a period of 12 months after practical completion. During this warranty period, if these Services fail to meet the warranty in clause 9.4, Customer shall promptly notify Seller in writing specifying the nature of the defect or failure. Seller

shall reperform the Services to the extent required to remedy the failure.

9.5 The remedies in this clause 9 shall be the sole and exclusive remedies available to the Customer and Seller's sole liability for any breach of warranty in respect of Goods and/or Services. Seller's total liability under this clause 9 shall not exceed the value of the repaired or replaced Goods and/or re-performed Services.

9.6 Warranty Exclusions. This warranty does not apply to:

- (a) Any Goods that have been subject to improper use, installation, handling, maintenance, storage, or repairs by the Customer or third parties;
- (b) Any damage caused by accidents, abuse, neglect, fire, water, or any act of nature or external causes not attributable to a defect in the Goods;
- (c) Wear and tear resulting from normal usage;
- (d) Goods that have been modified or altered by the Customer or third parties without the prior written consent of the Seller;
- (e) Any equipment free-issued to Seller that may or may not be integrated, or included, as part of the Goods.

9.7 Disclaimer of Other Warranties. Except as expressly provided in this Contract, the Seller makes no other warranties, express or implied, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose, or non-infringement.

### 10. LIMIT OF LIABILITY

10.1 Where Seller is acting as a reseller or distributor of Goods, liability is limited to the warranty outlined in clause 9.2.

10.2 Nothing in the Contract shall exclude or in any way limit either Party's liability for death or personal injury caused by its own negligence, fraud or fraudulent misrepresentation or any other liability which cannot be excluded by law.

10.3 Without prejudice to clause 10.2 above, Seller shall not be liable under the Contract for any loss of revenues, profits, business, contracts, opportunity, anticipated savings or goodwill or for any special, indirect or consequential loss, costs, damages, charges or expenses, in each case, however caused, even if foreseeable.

10.4 Subject to clauses 10.2 and 10.3, to the maximum extent permitted by applicable law, Seller's total aggregate liability arising out of or related to the Contract or the Services under any theory of law (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) shall not exceed the value of Quote under which the claim arises.

10.5 Nothing in this clause 10 shall limit Customer's payment obligations under this Contract.

10.6 For the avoidance of doubt, Seller is not liable for the performance of any equipment provided or nominated by the Customer, if any.



**11. FORCE MAJEURE**

The Seller shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods or Services howsoever arising including, without prejudice to the generality of the foregoing, any delay or failure due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

- (a) act of God, explosion, flood, tempest, fire, or accident or any sort;
- (b) war or threat of war, sabotage, insurrection, civil disturbance, requisition or global health pandemic;
- (c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary, local or other authorities (including but not limited to naval or military authorities);
- (d) import or export regulations, embargoes or blockades;
- (e) strikes, lockouts or other industrial actions or trade disputes whether actual or threatened and whether involving employees of the Seller or of a third party;
- (f) difficulties in obtaining raw materials, labour, fuel, parts of machinery; or
- (g) power failures or breakdown in machinery.

**12. TERMINATION**

12.1 Either Party may terminate the Contract with immediate effect by serving written notice to the other Party where:

- (a) the other Party is in material breach of its obligations under the Contract and does not remedy such breach (if remediable) within thirty (30) days from first written notice; or
- (b) the other Party is unable to pay its debts as they fall due, ceases to carry on business, goes into liquidation, has a receiver appointed or becomes insolvent.

12.2 Without affecting any other right or remedy available to it, Seller may terminate this Contract with immediate effect by giving written notice to Customer if Customer fails to pay any amount due under this Contract on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment.

12.3 On termination or expiry of this Contract for any reason:

- (a) Customer shall immediately pay to Seller all of Seller's outstanding unpaid invoices and interest and, in respect of the Goods and/or Services supplied but for which no invoice has been submitted, Seller may submit an invoice, which shall be payable immediately on receipt;
- (b) each Party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other Party;
- (c) any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect.

12.4 Termination of this Contract shall not prejudice or affect the accrued rights, claims or liabilities of the parties including rights, claims and liabilities arising from termination.

**13. MISCELLANEOUS**

13.1 Confidential Information. Each Party (the "Receiving Party") acknowledges that, in the course of this Contract, it may obtain confidential information from the other Party, (the "Disclosing Party"). The Receiving Party shall keep in confidence all confidential information disclosed by the Disclosing Party and shall not use such confidential information except in furtherance of this Contract.

13.2 Waiver. No delay or abstention on the part of one or the other of the parties in the exercising of its rights shall constitute a waiver of all or any of the rights that it holds under the Contract or could be considered as such and, in all cases, cannot harm any right whatsoever of this party to the Contract.

13.3 Partial invalidity. If one or several of the clauses of the Contract are found to be invalid or declared as such pursuant to a law, regulations or a final decision of a competent court, the other clauses shall retain their force and their scope.

13.4 Entire Agreement. This Contract and any documents referred to in it, constitute the entire agreement between the parties in relation to its subject matter and supersedes all previous undertakings and agreements, written, oral or implied between Seller and Customer.

13.5 Assignment. Customer shall not assign, novate, or otherwise transfer this Contract without prior written consent of Seller. Seller may assign, novate, subcontract or otherwise transfer this Contract at any time.

13.6 Publicity. Neither Party may publicly announce this Contract except with the other Party's prior consent or as required by applicable laws. However, Seller may include Customer and its trademarks in Seller's customer lists and promotional materials but will cease this use at Customer's written request.

13.7 Independent Contractor. The parties agree Seller is an independent contractor and nothing in this Contract should be construed as creating an agency, partnership, joint venture, franchise, or employment relationship between the parties.

13.8 Notice. Any notice to be given by either party for the purposes of the Contract shall be sent by email. A notice delivered by email shall be deemed to have been received at 9.00am on the next business day after transmission.

13.9 Amendment. The parties agree that no amendment to the terms of this Contract shall be made except by agreement in writing and signed by both parties.

13.10 Dispute Resolution. The parties shall do their best acting in good faith to settle amicably any dispute, controversy or claim arising out of or in connection with the existence, validity, construction, performance and termination of the Contract (or any terms thereof). Escalation to the senior management (or company director) of the Parties shall be the preferred dispute resolution methodology. If senior management (or company director) cannot resolve the dispute within thirty (30) days of first

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notification of the dispute the matter shall be referred to the courts of Ireland in accordance with clause 13.11.

- 13.11 Governing Law and Jurisdiction. This Contract and any disputes or claims arising out of or in connection with it are governed by and construed in accordance with the laws of the Republic of Ireland. The parties irrevocably agree that the courts of the Republic of Ireland have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non- contractual disputes or claims).