

Fluent Wave

Terms and Conditions of Purchase for Commercial Operations

1. **TERMS AND CONDITIONS:** These Terms apply to the purchase order or scheduling agreement (“**Order**”) issued by Fluent Wave Imaging B.V. or its affiliates or subsidiaries (“**Fluent Wave**”) to the Seller identified on the Order (“**Seller**”) to which these Terms are attached, and Seller agrees to sell the products specified in such Order pursuant to these Terms. While Seller may acknowledge receipt of the Order by signing and returning it, any terms and conditions in any specific order acknowledgement documentation, invoice, or other writing, preprinted or otherwise, are rejected and shall not modify this Order. Any amendments to these Terms must be in writing and signed by both parties hereto.
2. **ORDER ACCEPTANCE:** Seller shall notify Fluent Wave in writing by e-mail or facsimile within two (2) business days after receipt of an Order if Seller is unable to accept Fluent Wave’s requested delivery schedule. Failure of Seller to object to the requested delivery schedule within two (2) business days shall constitute acceptance.
3. **PACKAGING AND SHIPMENT:** Seller shall comply with Fluent Wave’s shipping instructions including Fluent Wave Part numbers on all documents. Seller shall utilize Federal Express or UPS using Fluent Wave’s account numbers or provide a better logistical/economical solution to Fluent Wave for approval. Seller shall suitably wrap, box and/or crate all products to protect against hazards of shipment, storage and exposure. All packages containing hazardous materials/dangerous goods shall be prepared in accordance with and comply with all applicable regulations. Seller shall provide hazardous material data sheets promptly upon request. Itemized packing slips showing the Order number, Fluent Wave’s part number and quantity shipped must be on the outside of the box. Fluent Wave’s count shall be conclusive in the absence of a packing slip. No separate charge shall be made for cartons, wrapping, packing, boxing, crating, delivery, drayage or similar costs, unless otherwise mutually agreed.
4. **CHANGES:** Fluent Wave may make changes to the Order at any time prior to shipment. If any change causes an increase or decrease in the cost of, or the time required for performance, Seller may request an equitable adjustment by written amendment to the price and/or delivery schedule. Any claim by Seller for adjustment shall be asserted in writing within two (2) days from the date of receipt of the written order directing the change; provided that Fluent Wave, in its discretion, may receive and act upon such claim asserted at any time before final payment. Costs used in determining contract price adjustments shall be direct costs reasonably incurred, together with applicable indirect costs, computed in accordance with generally accepted accounting principles using Seller’s customary accounting practices and procedures, consistently applied. Seller shall prepare its proposed contract price adjustments as specified by Fluent Wave, which proposal and Seller’s related books and records shall be subject to audit by Fluent Wave or its representatives. Where the cost of property made excess or obsolete as a result of a change is included in an equitable adjustment, Fluent Wave shall have the right to prescribe the disposition of such property.

5. **DELIVERY:** Unless otherwise agreed and stated on the face of the Order, all shipments are FOB Heerlen (Incoterms 2020). The delivery date shall be as set forth in the Order or as mutually agreed upon by the parties. Time is of the essence with respect to this Order. Seller shall immediately notify Fluent Wave in writing of any anticipated delay in meeting the delivery schedule, stating the root cause and corrective action for the delay. If Seller's delivery fails to meet the schedule, then Seller shall, at Fluent Wave's request, expedite the routing at Seller's expense. Seller shall not deliver products (i) earlier than three (3) days prior to the scheduled delivery date or (ii) later than the scheduled delivery date, without Fluent Wave's consent, and Fluent Wave may return early, late or excess shipments at Seller's sole risk and expense. Title and risk of loss for a product shall pass to Fluent Wave upon delivery to Fluent Wave's factory in Heerlen.
6. **INSPECTION:** Seller shall maintain an inspection system adequate to ensure that all products conform to the requirements of the Order and their applicable specifications. Fluent Wave may accept, reject or require correction of defects (at no additional charge) after delivery or completion by Seller of any required installation, whichever occurs last. If the Products are ordered in such large quantities that testing each unit is impractical, Fluent Wave inspection and testing may be limited to a representative sample of the products delivered under this Order. If the nonconformance rate indicated from such sampling is unacceptable, then Fluent Wave shall be entitled to return the entire shipment of that product, notwithstanding the fact that some individual units of the product may conform to the Specifications. Payment shall not constitute acceptance. If any Product delivered hereunder fails to conform to its applicable specifications, Fluent Wave shall notify Seller of such failure and Seller shall work on an expedited basis to deliver conforming products to Fluent Wave. If Seller fails to cure all nonconformities within a reasonable period (not to exceed thirty (30) days), Fluent Wave shall have the right, without liability, to cancel the Order for that product and any other products, the acceptance of which is impractical in Fluent Wave's reasonable opinion as a result of Seller's failure. Seller shall be liable to Fluent Wave for any nonconforming work or products and for any other damages suffered by Fluent Wave, except to the extent Seller proves that such damages would have been mitigated but for the failure of Fluent Wave to timely notify Seller.

6. **QUALITY REQUIREMENTS**

a. **Discontinuation or Modification.** Any changes proposed by Seller or Seller's subcontractors, to materials, processes, or software, which may affect the form, fit, or function of the product, and/or the reliability, safety, regulatory compliance, serviceability, performance and warranty of the product, and/or any approved product quality plans, must be submitted at least twelve (12) months prior to implementation in the form of a written change request for Fluent Wave's approval. For clarification purposes, applicable product changes may be inclusive of but not limited to, changes of sources of material, components and parts, changes in manufacturing processes, test procedures, manufacturing locations and relocation or replacement of any equipment utilized in manufacturing the product. Products affected by such changes may not be delivered to Fluent Wave until the Seller has received written approval for the changes from Fluent Wave. At minimum, the change notice must include the Fluent Wave affected part number or software revision (if applicable), proposed date of implementation, serial number verification/ validation records, effectiveness of the assembly that is changed, reason for the change, specific details of the change (including price and lead-time changes) and, if available,

supporting data that demonstrates that product reliability has not been impacted negatively. In addition, Fluent Wave has the right to request product samples for evaluation prior to approval by Fluent Wave of such product changes at no additional cost. Change control applies to product attributes that may affect the following: (i) Form - external appearance as would be noticed by the end user; (ii) Fit - backwards and forwards compatibility as determined by defined interfaces (firmware, software, electrical, mechanical, etc.); or (iii) Function - adherence to published specifications as listed on the product Insert (e.g., standard products) or agreed upon specifications (e.g., custom OEM products).

b. Quality Management System. The Seller shall document, implement, and maintain an acceptable quality system. ISO 9001 for industrial (non-medical) products and ISO 13485 (for Medical Device Products) standard or equivalent certifications, are examples of an acceptable quality system. In the case a Seller is not certified to an acceptable quality standard, Fluent Wave will have the right to perform a Seller audit per the requirements of the applicable standard. The quality system shall include, but should not be limited to, a Quality Systems Manual and a Master List of Quality Procedures. Seller shall submit a copy of the appropriate ISO certificate, or other similar certificates of Good Manufacturing Practice issued by an independent certification body to Fluent Wave whenever the certificate is revised or renewed. Each Party shall appoint a Quality Representative to coordinate the activities under these Requirements and the applicable Supply Agreement.

c. Audit Rights. Fluent Wave reserves the right to conduct compliance audits on an as needed basis. In addition, Seller agrees and acknowledges that for Medical Device Products, Notified Bodies may conduct periodic, unannounced audits of Seller's facilities (and those of its subcontractors) from time to time pursuant to the relevant health authority requirements and such other rules and regulations. ("Regulatory Requirements"). Seller shall allow, without notice, Fluent Wave, Notified Body of Fluent Wave or National Competent Authorities of countries where Fluent Wave markets its products to inspect the premises, manufacturing process, technical documentation and records ("Unannounced Inspections") as required by the relevant medical device directives and other Regulatory Requirements. In addition, Seller shall have agreements in effect with its subcontractors which ensure that its subcontractors agree to the same. In addition to such Unannounced Inspections, upon Fluent Wave's written request, Seller shall allow Fluent Wave (directly or through third parties) within a reasonable period of time to audit and inspect Seller's and its subcontractors' quality management system and manufacturing process, as well as all other records that Seller (and its subcontractors) is required to maintain hereunder, at periodic intervals, as well as copy any documents necessary to ensure Products and Services provided to Fluent Wave shall meet or exceed Fluent Wave's requirements (a "Quality Audit"). Fluent Wave may also request periodic joint quality assurance meetings at the Seller's (or its subcontractors') facility to evaluate Product quality and reliability, the manufacturing process and/or compliance to quality management system requirements. If a Quality Audit finds or identifies any condition(s) that are not in compliance with these Requirements, Product specifications, or other quality system issues (hereinafter a "Finding"), then Seller shall provide Fluent Wave with a written corrective action plan within a reasonable timeframe not to exceed thirty (30) calendar days after the receipt of the Quality Audit report. The corrective action plan shall, at a minimum, contain the results of an investigation into the cause of the Finding, a corrective action plan for addressing each Finding, and a schedule indicating when such corrective actions shall be implemented.

8. **INVOICES AND PAYMENT:** Seller shall invoice at the prices on the face of the Order or Seller's then current published price for such products if lower utilizing Fluent Wave's part numbers. Prices are exclusive of all taxes unless otherwise specified by Fluent Wave on the face of the Order. Fluent Wave shall pay all sales and use taxes unless an exemption certificate is furnished by Fluent Wave to Seller with respect to any products sold or licensed and any services rendered to Fluent Wave under this Order. Such taxes, when applicable, will appear as separate items on Seller's invoice. If applicable law requires Fluent Wave to withhold any income taxes levied by the United States on payments ("**Withholding Tax**"), Fluent Wave shall be entitled to deduct such Withholding Tax from the payments due Seller. Invoices covering only one order, shipping notices, bills of lading, and receipts shall be mailed or emailed promptly after shipment. Seller's invoice shall identify the country of origin of each product sold to Fluent Wave. Discounts shall apply to payments paid within the stated period, computed from the date of receipt of a proper invoice. Payment shall not be due and owing until sixty (60) days from acceptance of the products. All payments shall be made in Euros unless otherwise specified in the Order.
9. **PROPERTY FURNISHED BY FLUENT WAVE:** All items furnished by Fluent Wave, or the cost of which is charged against this Order shall: (i) be kept confidential, (ii) be and remain Fluent Wave's property, (iii) not be used without Fluent Wave's permission and (iv) be returned to Fluent Wave immediately upon request. Seller shall be responsible for safekeeping such property, and for providing at Seller's expense, property insurance acceptable to Fluent Wave covering all such items. Seller shall defend, indemnify and hold harmless Fluent Wave, from loss of or damage to, and all claims that may be asserted against, said property. Seller shall mark all such property with the name "Fluent Wave" and Fluent Wave's drawing or tool number where applicable. Seller shall not copy or permit the copying, in whole or in part, and shall not furnish, offer, quote, sell or advertise for sale any items or information owned by Fluent Wave, nor any goods made in accordance with Fluent Wave specifications, drawings or samples, without Fluent Wave's express written consent. Notwithstanding any defect in such items or information, or any fault or neglect of Fluent Wave, Seller shall indemnify, defend and hold harmless Fluent Wave from any and all loss, damages and claims relating in any way to any such use by Seller of such items or information or to the products produced from them.
10. **WARRANTY:** Seller warrants that: (i) all products are of new material, merchantable, free from defects, and unreasonable hazards, in design, material, and workmanship, are fit for the purposes described herein, and conform to their applicable specifications, (ii) Seller has the authority to enter into this Order and to perform its obligations hereunder, and (iii) Seller has taken all proper and necessary precautions for the safety and protection of persons and property, and has provided all proper warnings for hazards related to products and work that cannot be eliminated. These warranties, Seller's service guarantees, and implied warranties, shall survive inspection, test and acceptance at all tiers, and shall run to Fluent Wave and subsequent owners and users of the products. Fluent Wave's remedies under these warranties shall include at Fluent Wave's election: (a) return and full refund of the purchase price paid by Fluent Wave for such products, (b) repair by Seller or persons designated by Seller and accepted by Fluent Wave of any products found to be defective or in violation of these warranties, without charge, or (c) replacement of products with new products that conform to these warranties. Seller shall be responsible for all shipping and other fees in connection with return and/or replacement of defective products.

11. **SUSPENSION OF WORK:** Seller shall develop and keep current a formal business recovery plan that details strategies for response to and recovery from a broad spectrum of potential disasters. Upon request, Seller shall make such plan available to Fluent Wave or its designated representative for review. If, without the fault or negligence of Seller, the performance of all or any part of the work is suspended, delayed or interrupted for an unreasonable period of time by an act or omission on the part of Fluent Wave or by written notice by Fluent Wave under Section 4 (Changes), Seller may request an equitable adjustment in price and/or delivery. No adjustment shall be allowed for any costs or delay incurred more than 10 days before Seller gives written notice to Fluent Wave of the basis of the claim and expected costs and delays. Failure to agree on any adjustment under this Section or Section 4 (Changes) shall be a dispute subject to Section 18 hereof.

12. **TERMINATION**

a. **For Cause:** Fluent Wave may terminate this Order, in whole or in part, upon written notice to Seller if Seller: (i) fails to deliver products or perform services within the schedule; (ii) fails to perform any material provision of this Order or fails to make progress that endangers scheduled performance hereof, and does not cure such failure within a period of ten (10) days (or such longer period as Fluent Wave may authorize in writing) after receipt of written notice from Fluent Wave specifying such failure; or (iii) fails promptly to provide adequate written assurances of performance satisfactory to Fluent Wave when it appears that Seller may not perform in accordance with this Order and assurances are requested by Fluent Wave. Fluent Wave may terminate at any later time for any continuing or subsequent breach.

b. **For Convenience:** Fluent Wave may at any time by written order, terminate this Order in whole or in part for its convenience. In no event shall Fluent Wave be obligated for any amount in excess of the contract price for terminated products or for any amount greater than the percentage of the contract price reflecting the percentage of the work performed prior to notice of termination, whichever is less, plus reasonable costs established by Seller to the reasonable satisfaction of Fluent Wave.

c. **Effect of Termination:** If Fluent Wave terminates part of the Order for any reason, Seller shall diligently continue performance of the remainder. If Seller's default is not the result of excusable delay pursuant to Section 13, Seller shall be liable to Fluent Wave for any excess costs for repurchasing similar products or services and other damages incurred. If it is determined Seller was not in default, such termination shall be converted to a Termination for Convenience. In no event shall Seller be entitled to profit on terminated work remaining to be performed. Upon termination of this Order, Fluent Wave may require Seller to transfer title and deliver, as directed by Fluent Wave, (i) any completed supplies, and (ii) such partially or fully completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights as Seller has produced or acquired for the performance of the terminated part of this Order, and Seller shall, at Fluent Wave's direction, protect and preserve property in Seller's possession in which Fluent Wave has an interest. Payment for delivered products accepted by Fluent Wave and for the protection and preservation of property shall be in an amount agreed upon; failure to agree shall be subject to Section 18 (Disputes). Notwithstanding any defenses of Seller, Fluent Wave may set off, withhold or recover from Seller such sums as may be claimed or withheld by Fluent Wave or its customer based upon or relating to any breach or alleged breach by Seller or any of its subcontractors or suppliers at any tier, of any representations, certifications, or obligations

under this contract or applicable laws, regulations, or orders of government agencies. Seller shall indemnify, defend, and hold harmless Fluent Wave and any higher tier contractor to which Fluent Wave owes a similar obligation, from any and all loss, damage, expense and liability, including administrative expenses and attorney's fees, relating in any way to any claims by any other person or entity arising out of or relating to any such breach or alleged breach. The rights and remedies of Fluent Wave provided in this contract and by law are cumulative. In no event shall Fluent Wave be liable for anticipated profits, or for incidental or consequential damages. Fluent Wave shall not be liable for penalties or for any amount in damages or otherwise in excess of the price allocable to the units of product or work giving rise to the claim.

13. **CONFIDENTIAL INFORMATION:** “**Confidential Information**” shall include all Fluent Wave non-public information (including but not limited to any specifications, drawings and other technical information) and any non-public information that is transmitted by one party to the other in connection with this Order, whether in written, oral, graphic, electronic, or any other form, which information is marked or indicated at the time of disclosure or observation as being “Confidential” or “Proprietary,” or which would be deemed by a reasonable person to be confidential in nature. Each party agrees that it shall use the same degree of care and means that it utilizes to protect its own information of a similar nature, but in any event not less than reasonable care and means, to prevent the unauthorized use or the disclosure of such Confidential Information to third parties. Confidential Information may be disclosed only to employees or contractors of a recipient (including subcontractors and affiliates) with a “need to know” who are instructed and agree in writing not to disclose the Confidential Information and not to use the Confidential Information for any purpose other than in connection with this Order. Recipient shall have appropriate written agreements with any such employees or contractors sufficient to allow recipient to comply with the provisions of this Order. Each of the parties further agrees to make no use of such Confidential Information except as necessary to perform its obligations or exercise its rights under this Order. The obligations of confidentiality and restricted use set forth in this Section shall survive the expiration or termination of this Order. Confidential Information shall not include and the foregoing obligation shall not apply to data or information which: (i) is in the public domain at the time it was disclosed or later enters the public domain, except through the fault of recipient or breach of an obligation of confidentiality; (ii) is known to recipient at the time of disclosure without an obligation of confidentiality; (iii) becomes known to recipient from a source other than the disclosing party without breach of an obligation confidentiality; (iv) is furnished to third parties by the disclosing party without an obligation of confidentiality; or (v) is independently developed by recipient without the benefit of the disclosing party's Confidential Information as demonstrated by the recipient's written documentation. Nothing in this Order shall prevent recipient from disclosing Confidential Information to the extent it is required to do so by the rules and regulations of the U.S. Securities and Exchange Commission (“SEC”) or the listing standards of any stock market or exchange or is otherwise legally compelled to do so by any governmental, investigative, or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, that party shall: (a) assert the confidential nature of the Confidential Information to the agency, SEC, or exchange; (b) immediately notify the disclosing party in writing of the order or requirement to disclose (to the extent lawfully permitted); and (c) cooperate fully with the disclosing party (at disclosing party's expense) in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality. Recipient shall not be held criminally or civilly liable under

any federal or state trade secret law for the disclosure of Confidential Information that is made: (i) in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. If recipient files a lawsuit for retaliation by disclosing party for reporting a suspected violation of law, recipient may disclose Confidential Information to its attorney and use the Confidential Information in the court proceeding, if recipient files any document containing the Confidential Information under seal and does not disclose the Confidential Information except pursuant to court order. Neither party shall advertise, publish or otherwise disclose the terms and conditions of this Order without the prior written consent of the other party, except as required by law and except as necessary to litigate or otherwise pursue a claim.

14. **DELAY:** Seller shall immediately notify Fluent Wave of any threatened or actual labor dispute or other matter which may delay Seller's performance hereunder, and the anticipated duration of the delay, and Seller agrees to insert the substance of this requirement in all subcontracts and purchase orders hereunder. Excusable delays are those delays which arise out of causes beyond the control and without the fault or neglect of Seller or its subcontractors, including acts of God or of the Government, fires, floods, strikes, embargoes, unusually severe weather, or arising from causes beyond the control of and without the fault or neglect of both Seller and such subcontractor(s) and where Seller could not have obtained the supplies or services from other sources in sufficient time to permit Seller to meet the delivery schedule. Notwithstanding any other provision hereof, Fluent Wave may terminate this Order in whole or in part without cost to Fluent Wave, where any actual or projected excusable delay is material or indefinite, would result in frustration of purpose of this Order, or would require Fluent Wave to cover by purchasing substitute products under Fluent Wave's contractual obligations.
15. **INNOVATIONS:** The term "Innovations" means each invention, improvement, method, design, idea and discovery (copyrightable, patentable or not), by Seller, or any of its subcontractors or suppliers at any tier, conceived or first reduced to practice during or in the performance hereof or of work done upon the understanding that an Order would be provided to Seller by Fluent Wave. The term "Technical Personnel" means each person employed by or working for or with Seller, who would reasonably be expected to, or who actually makes, Innovations hereunder or who would reasonably be expected to, or who actually is, exposed to Innovations or Fluent Wave Confidential Information under this Order. Innovations do not include intellectual property owned or licensed by Seller prior to its activities under this Order or not created in the course of its activities hereunder. Seller shall have the obligations set forth in Subsections (i) – (iv) below, with respect to Innovations.
 - i. Maintain written agreements with all its Technical Personnel, requiring them to disclose promptly in writing, and assign to Fluent Wave or Seller, all Innovations (and all intellectual property rights therein) made by them, either solely or jointly with others. Said agreements shall specify, and Seller agrees, that (a) upon request of Fluent Wave and without further compensation therefor, Technical Personnel and Seller shall cooperate fully and do all rightful acts, including the execution of proper papers and oaths, which in Fluent Wave's opinion may be necessary or desirable in obtaining, sustaining or reissuing patents or copyrights or other intellectual or industrial property rights on any Innovations, or for maintaining Fluent Wave's title thereto, and (b) Technical Personnel shall be instructed to treat and shall treat as Confidential Information all information received by them in connection with this Order;

- ii. Obtain and deliver promptly to Fluent Wave full written descriptions of Innovations along with the assignment of all rights therein to Fluent Wave from Technical Personnel and from Seller, to document Fluent Wave's entire and exclusive right, title and interest in the Innovations, including all intellectual and industrial property rights therein and applications therefore.
- iii. If to the best of the knowledge and belief of Technical Personnel and Seller, no Innovations have been conceived or first reduced to practice under or related to this Order, so certify to Fluent Wave; and
- iv. Not furnish and agrees that it has not been necessary for Fluent Wave to receive from Seller, any Seller proprietary information and that Seller has not furnished or disclosed to Fluent Wave any materials, documents or other information which are deemed to be Confidential Information to Seller or to any third party in connection with the Innovations or which are required to exercise Fluent Wave's rights in and to such Innovations.

16. INTELLECTUAL PROPERTY INDEMNITY: Seller shall indemnify, defend, and hold Fluent Wave and its officers, directors, employees and agents and subsequent owners of the products harmless against any and all actions, claims, liabilities, costs, damages and expenses (including reasonable attorneys' fees), with respect to actual or alleged infringement of any intellectual property rights arising out of this Order or the products, except to the extent such infringement arises as a result of Seller's compliance with Fluent Wave's detailed designs and specifications and there is no reasonable, non-infringing way to comply with such designs and specifications (and Fluent Wave is notified in writing of such issue). Such indemnification is conditioned upon Fluent Wave promptly notifying Seller of such claim, rendering Seller reasonable assistance (at Seller's expense), and permitting Seller to direct the defense or settlement of such claim, except that Seller may not enter into a settlement arrangement which would result in a significant adverse effect on Fluent Wave without Fluent Wave's prior written consent. Should the use by Fluent Wave or its customers of any products purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole expense, either: (a) substitute fully equivalent non-infringing products; (b) modify the infringing products so that they no longer infringe but remain fully equivalent; or (c) obtain for Fluent Wave and its customers the right to continue use of the products.

17. INDEMNIFICATION: Seller shall indemnify, defend and hold Fluent Wave and its officers, directors, employees and agents harmless from and against any and all actions, claims, liabilities, costs, damages and expenses (including reasonable attorneys' fees) for physical damage to or loss of tangible property, for injury or death of any person and for any product recall or retrofit, in each case to the extent arising out of, resulting from or caused by: (a) acts or omissions of Seller, its employees, agents and subcontractors, or (b) any defect in design, workmanship or materials carried out or employed by Seller or its employees, agents or subcontractors, or (c) entering upon premises occupied by or under the control of Fluent Wave, any of its customers, or suppliers in the course of performing this Order, except in each case to the extent that any such damage to or loss of property and injury or death of any person is caused by acts or omissions of Fluent Wave, its employees, agents and subcontractors. This indemnification shall be in addition to warranty obligations of Seller. Seller will obtain and maintain product liability insurance or self-insurance retention program to cover its liability to third parties in connection with the sale of products, to cover obligations set forth above, and to cover workers' compensation and employer's liability for all employees engaged in performing the work. Seller will

furnish certificate of insurance to Fluent Wave with respect thereto annually.

18. COMPLIANCE

a. **Regulatory.** All Products shall fully comply with the regulatory agency requirements listed in the relevant specification. Seller will further ensure that the products remain compliant with those regulatory agency requirements including new approval standards and certification regimes, which subsequently become applicable. Seller will submit to Fluent Wave sufficient proof of the certifications and approvals.

b. **Environmental.** Seller represents and warrants that (a) no product shall have come into physical contact with: (i) a Class I substance, as defined in Article 611 of the Federal Clean Air Act (the “**Act**”), during any portion of the manufacturing process; or (ii) a Class II substance, as defined in the Act and Title 40, Code of Federal Regulations, Article 82 (the “**Code**”), during any portion of the manufacturing process or (b) the products will not contain or be manufactured using ozone depleting substances including without limitation chlorofluorocarbons, halons, methyl chloroforms, and carbon tetrachlorides. If any of these requirements are not satisfied and/or Seller becomes aware that Seller is subject to any warning or labeling requirements regarding a Class I substance or a Class II substance pursuant to the Act or any regulation promulgated under the Act, Seller shall immediately notify Fluent Wave in writing, explaining the circumstances constituting any of the foregoing and identifying the products involved. Unless otherwise directed in writing by Fluent Wave, the products will not contain any substance set forth on the list of prohibited substances as made available by Fluent Wave to Seller from time to time in writing, including a posting on Fluent Wave’s website. In addition, all products are subject to Full Material Declaration (FMD) Requirements, without respect to whether the products or Fluent Wave finished products into which the products are integrated, if any, are exempt from such requirements. “**FMD Requirements**” means complete disclosure of chemical composition including any requirements concerning the disclosure of hazardous substances contained or used in any product, component, material or part. Examples of requirements are those in Directive 2011/65/EU of the European Parliament and of the Council of 08 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment as amended from time to time (“**RoHS Directive**”), Regulation (EC) No 1907/2006 of the European parliament and of the council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (**REACH**), the equivalent of the RoHS Directive as implemented in China and Japan, and/or other similar environmental and/or materials declaration laws, directives, regulations and requirements. Upon request, Seller shall provide and obtain from sub tier suppliers FMD of the products and any other relevant information regarding the products, including without limitation, test data and safe use and hazard information, subject to reasonable protection of Seller’s confidential business information. Seller agrees to notify Fluent Wave immediately in writing should it or any of its suppliers determine that non-compliant products have been shipped and to provide Fluent Wave with the identification numbers of the non-compliant products and stop shipping non-compliant products

c. **SBA.** Fluent Wave is a government contractor and is subject to the requirements of FAR section 52.219. Pursuant to FAR 52.219.9 and to the extent applicable, if Seller has U.S. operations and (a) is not considered a Small Business (as the term is defined in Section 3 of the Small Business Act) and (b) is providing goods or services under this Order in an amount greater than or equal to \$650,000, Seller

will comply with the provisions of FAR 52.219. If Seller has U.S. operations, will be using a subcontractor for any of the goods or services provided hereunder and meets the criteria in (a) and (b) above, Seller will be required to have a small business plan in place.

d. **Anti-Corruption.** Seller shall comply with applicable federal, state, and local law and regulations, and orders of government agencies in connection with this Order. In addition, Seller shall comply with Fluent Wave's vendor policies as made available from time to time, including policies relating to Anti-Corruption and Anti-Fraud.

e. **Government Contracts.** Because Seller's supplies or services may be incorporated into products sold by Fluent Wave to United States government agencies as Commercial Items (in accordance with Federal Acquisition Regulation ("FAR") Part 12), Seller agrees to comply with the following requirements: (1) FAR 52.222-26 Equal Employment (B.O. 11246), (2) FAR 52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212) and (3) FAR 52.222-36 Affirmative Action for Workers with Disabilities (29)

f. **Export.** Both parties will cooperate to effect compliance with all applicable U.S. export and/or import regulations. Seller shall provide Fluent Wave with complete and accurate information for all products, software, and technical data sold or licensed to Fluent Wave under this Order for purposes of Fluent Wave's compliance with U.S. import and export regulations.

g. **Conflict Minerals.** "Conflict Minerals" shall have the meaning ascribed to it under the Dodd-Frank Wall Street Reform and Consumer Protection Act. Seller will fully comply with and follow all applicable laws relating to Conflict Minerals. Seller will disclose any Conflict Minerals used in the production of any Product, and, in the event such materials are used, shall submit, as applicable, either (i) its report filed with the Securities and Exchange Commission under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (ii) a description reasonably acceptable to Fluent Wave of measures taken to assure the appropriate sourcing and chain of custody of such materials. To the extent Fluent Wave's compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act requires disclosure of Fluent Wave's relationship with Seller and Seller's compliance with Fluent Wave's Conflict Minerals policies, then any applicable confidentiality obligations set forth in this or any other agreement are expressly waived with respect to such disclosures.

19. **DISPUTES:** This Order shall be construed under and governed by the laws of the Country of the Netherlands without regard to conflicts of laws rules. The parties exclude in its entirety the application to this Order of the United Nations Convention on Contracts for the International Sale of Goods. Fluent Wave and Seller shall meet in good faith to attempt to resolve informally any disputes arising out of this Order. If the parties are unable to resolve such disputes informally, either side may initiate legal action for relief. Venue shall be in the state and/or federal courts located in the Hague, the Netherlands, which shall have the jurisdiction over the subject of such disputes. In any action to enforce this Order, the prevailing party shall be awarded all court costs and reasonable attorneys' fees incurred, including such costs and attorneys' fees incurred in enforcing and collecting any judgment. Pending final disposition of any dispute, Seller shall proceed diligently with the performance hereof provided Fluent Wave has paid

or tendered payment of any undisputed sums due to Seller.

20. **MARKING, DUTY, DRAWBACK:** Seller shall mark each item of foreign goods with the English name of the country of origin (if known) as conspicuously and permanently as possible (or on the container if the item cannot be so marked) and comply with all other marking requirements. At Fluent Wave's request, subject to the applicable manufacturer providing the same to Seller, Seller shall: (i) inform Fluent Wave of the existence of any duty drawback rights, (ii) provide a certificate of country of origin of imported goods sufficient to satisfy the customs authorities of the country of receipt (iii) designate Fluent Wave as importer of record of imported and dutiable goods, (iv) furnish Fluent Wave properly executed documents required by U.S. Customs to prove importation and duty payment, and (v) transfer customs duty drawback rights from Seller to Fluent Wave.
21. **ASSIGNMENT:** Seller may not assign or subcontract any portion of this Order without the prior written consent of Fluent Wave; except that Seller may enter into subcontracts for purchases of parts and supplies, and subcontracts for commercial products. Fluent Wave may assign or otherwise transfer this contract, in whole or in part without notice to, or obtaining the consent of Seller. Provided Fluent Wave is promptly given copies of such assignment, Seller may assign claims for moneys due or to become due hereunder. Whether or not assigned, all payments shall be subject to setoff or recoupment for any present or future claims that Fluent Wave may have against Seller.
22. **ENTIRE AGREEMENT, MODIFICATION, NOTICES:** This Order constitutes the entire agreement of the parties hereto with respect to the sale of products and services by Seller to Fluent Wave and supersedes all prior representations, warranties, agreements, and understandings, of any kind, written and oral, of the parties hereto. It may not be modified or amended except by written amendment signed by the authorized representatives of the parties. All notices shall be given in writing and be personally delivered or sent by postage prepaid mail or overnight courier addressed to the parties at their addresses in the Order or as otherwise designated to the other by notice. No waiver of any term or provision hereof shall imply a subsequent waiver of the same or any other term or provision hereof or constitute a continuing waiver.

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