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1. Definitions

The following definitions are recognizable as capitalized words and will have the following meaning in these Terms:

- 1.1 Agreement: The concluded agreement between the Parties including any changes agreed upon In writing after its conclusion.
- 1.2 Article: an article of this Agreement, unless explicitly stated otherwise in this Agreement.
- 1.3 Client: the customer identified in the Offer or Agreement.
- 1.4 Documentation: Any product information, factory drawings, instructions, test certificates, catalogs, price lists, brochures provided by Fluent Wave to the Client at any time, including but not limited to: designs, drawings, pictures, plans, descriptions, explanations, ideas, models, samples, tables, diagrams, databases, software, calculations and all (other) information which by its nature is confidential.
- 1.5 Ex Works: the Ex Works delivery condition as specified in the Incoterms.
- 1.6 Fluent Wave: Fluent Wave B.V., with its registered office in Heerlen (The Netherlands) at the Jan Campertstraat 15A (zip code: 6416SG), as well as its affiliates, subsidiaries and/or group companies.
- 1.7 Free Carrier: the Free Carrier delivery condition as specified in the Incoterms.
- 1.8 Incoterms: the most recent version of the international delivery conditions "Incoterms" as adopted by the International Chamber of Commerce.
- 1.9 In writing: Correspondence by registered mail, bailiff's writ, regular mail, fax and e-mail.
- 1.10 Offer: Every Offer made by Fluent Wave to the Client.
- 1.11 Order Confirmation: The notification In writing from Fluent Wave to the Client containing a summary of the contents of the Agreement.
- 1.12 Party or Parties: Fluent Wave or the Client, or both Fluent Wave and the Client.
- 1.13 Terms: these terms and conditions of sale.
- 1.14 Product(s): All products and services in the broadest sense of the word provided by Fluent Wave to the Client.

2. Applicability, scope and interpretation

- 2.1. These Terms apply to every Offer from Fluent Wave, to every Agreement between Fluent Wave and the Client and to every other legal relationship between Fluent Wave and the Client. Any deviations to these Terms will only be considered to be in force insofar as these deviations have been explicitly confirmed in writing to the Client by Fluent Wave. Insofar as the Client refers in its offer or acceptance to other conditions, the applicability of those conditions is expressly rejected by Fluent Wave.
- 2.2. Only the employees of Fluent Wave who are duly authorized according to the commercial register of the Dutch Chamber of Commerce may perform legal acts on behalf of Fluent Wave. Any legal acts performed by persons other than these authorized persons cannot be invoked against Fluent Wave, unless Fluent Wave has confirmed these legal acts in writing. Legal acts are understood to mean, among other things, making an Offer, guaranteeing certain characteristics of Products, commitments regarding delivery dates, changing previously concluded arrangements, concluding an agreement, etc.
- 2.3. In the event of a conflict between a provision in these Terms and a provision in an Offer or Agreement, the provision in the Offer or Agreement will prevail.
- 2.4. If Fluent Wave does not invoke any provisions of these Terms this shall not be construed as a waiver or forfeiture of the right to invoke such provisions at a later time.
- 2.5. If one or more provisions of these Terms or the Agreement proves to be non-binding, invalid or non-enforceable, the other provisions will remain in force between the Parties. The Parties are obliged to replace the non-binding, invalid or non-enforceable provisions by a binding provision that approaches the purpose and purport of the Terms or Agreement as closely as possible.
- 2.6. Fluent Wave reserves the right to change these Terms unilaterally and without prior notice.

3. Offer and conclusion of Agreement

- 3.1. Each Offer is non-binding unless otherwise stated in the Offer. A non-binding Offer can be withdrawn within forty-eight (48) hours after acceptance, in which case no Agreement shall be concluded.
- 3.2. Without prejudice to Article 3.1 and Article 3.3 through 3.5, the Agreement is concluded when the Client accepts the Offer in writing.
- 3.3. If the Client's acceptance of an Offer differs in any respect from the Offer itself, the Agreement shall only be concluded when Fluent Wave confirms as such with an Order Confirmation.
- 3.4. If the Offer and/or the acceptance of the Offer were not made in writing, the Agreement will be concluded at the moment that Fluent Wave confirms the conclusion of the Agreement with an Order Confirmation and the Client does not object to the Order Confirmation in writing within forty eight (48) hours.
- 3.5. If, for any reason, Parties deviate from the provisions of Articles 3.2 through 3.4, the Agreement shall be deemed to be concluded as soon as Fluent Wave executes the Agreement or

instructs third parties to do so. In that situation, Fluent Wave's invoice shall be deemed to fully and correctly reflect the contents of the Agreement, unless the Client can provide evidence to the contrary.

- 3.6. Any Documentation provided by or on behalf of Fluent Wave will only bind Fluent Wave insofar as the Offer explicitly refers to data in this Documentation.
- 3.7. Fluent Wave will provide Documentation in single copy free of charge insofar as agreed upon or insofar as relevant in the opinion of Fluent Wave. The Client will owe Fluent Wave a reasonable reimbursement of the costs for any additional copies of Documentation of this kind.
- 3.8. Fluent Wave is authorized to engage third parties for the purpose of the realization of the Agreement as concluded between the Parties and to charge the costs involved to the Client in accordance with the Agreement.

4. Confidentiality

- 4.1. Without written permission by Fluent Wave, the Client is prohibited from copying or reproducing Documentation or parts thereof in any way whatsoever, from making it known to third parties, from allowing it to be used by third parties, from selling it to third parties or from making it available to third parties.
- 4.2. The Client is only permitted to use Documentation insofar as this is necessary for the conclusion or execution of the Agreement. At Fluent Wave's first request, or if the Agreement is not concluded, terminated before the end of the term or cancelled, the Client must immediately return all Documentation to Fluent Wave at the Client's expense and/or, insofar as it is deemed necessary by Fluent Wave, destroy all Documentation in such a way that it cannot be traced by anyone digitally and/or physically.
- 4.3. The Client shall only share the Documentation within its own organization with its own employees and insofar as this is necessary for the conclusion or execution of the Agreement. By accepting the Documentation the Client warrants that it has taken and will take adequate measures to prevent the Documentation or parts thereof from being leaked to parties other than the persons who are entitled to take note of the Documentation in accordance with this Article 4.
- 4.4. The Client is obliged to promptly report any violation of this Article 4 to Fluent Wave. In the event of a violation of this Article 4, the customer is obliged to immediately take any measure necessary to prevent or limit the damage caused to Fluent Wave as a result of the violation.
- 4.5. For any violation of this Article 4, the Client owes Fluent Wave an immediately due and payable penalty of € 10.000,00 (ten thousand euro) per violation, to be increased by a penalty of € 1.000,00 (one thousand euro) per day as long as the violation continues, without prejudice to Fluent Wave's right to claim full damages. Whether there has been a violation of this Article 4 shall be determined by Fluent Wave.
- 4.6. If Fluent Wave and the Client have concluded a non-disclosure agreement, that non-disclosure agreement will prevail over the confidentiality clauses in this Article 4.

5. Termination by giving notice before the end of the term

Without prejudice to the possibilities to terminate the Agreement on the grounds mentioned in these Terms, the Agreement may only be terminated by giving notice before the end of the term (in Dutch: "*opzegging*") if both Parties consent to such a termination and both parties consent to any further conditions subject to such a termination. If there is no mutual consent, a termination by giving notice will have no effect.

6. Prices

- 6.1. Unless otherwise stated in the Offer, all prices are in EURO and excluding: VAT, import duties, levies, taxes, excise duties, packaging costs, insurance costs, disposal fee(s) or any other costs.
- 6.2. Unless otherwise agreed upon, all deliveries within the European Union will take place Ex Works Jan Campertstraat 15A Heerlen, in accordance with the Incoterms.
- 6.3. Unless otherwise agreed upon, all deliveries outside the European Union will take place Free Carrier (FCA-A) Jan Campertstraat 15A Heerlen, in accordance with the Incoterms.
- 6.4. All other costs, including the costs of assembly, installation, connection, adjustment, calibration, validation, instruction, testing, inspection and commissioning, are only included in the price or part of the delivery, as far as the Parties have agreed upon In writing.
- 6.5. Fluent Wave is authorized at any time to increase the prices stated in the Offer or the Agreement if external factors beyond Fluent Wave's control give reason to such a price increase, which will be determined by Fluent Wave. Price increases do not constitute ground for termination, annulment or cancellation of the Agreement by the Client, nor do they constitute unforeseen circumstances for the Client to claim amendments to the Agreement.

7. Risk transfer

- 7.1. All risks related to the Products are subject to the Ex Works provisions for deliveries within the European Union or are subject to the Free Carrier provisions for deliveries outside the European Union.
- 7.2. The Client will cooperate in providing all documents Fluent Wave reasonably requires to execute and complete the Agreement, including any documents regarding transportation of the Products.

8. Delivery

- 8.1. Fluent Wave can, at its own discretion, charge a fee for orders not exceeding an amount to be determined by Fluent Wave, as a contribution to the administrative and logistic costs.
- 8.2. The point of delivery in the case of delivery within the Netherlands shall be the point at which the Products to be delivered are offloaded at the agreed location. The point of delivery shall, in the case of delivery outside the Netherlands be the point at which Fluent Wave has fulfilled its obligations under the Incoterms (Ex-Works).
- 8.3. Fluent Wave is entitled to deliver the Products in parts and to invoice these separately.

- 8.4 The Client shall inspect the Products immediately upon receipt and shall report any shortages, deficiencies and damage In writing to Fluent Wave within 48 hours after receipt. In the absence of a notification In writing, the Products shall deem to have been delivered in good condition and complete and accepted by the Client.
- 8.5 Due to the fact that the purchase, production, assembly and transport of the Products and the substances, raw materials and semi-finished products used in the manufacturing process can be prone to unexpected situations beyond Fluent Wave's control, Fluent Wave is entitled at all times to extend delivery times.
- 8.6 If the delivery has been extended more than four times, Parties shall determine in joint consultation whether the Agreement can still be executed. If Parties determine in joint consultation that the Agreement shall be terminated, no compensation obligation arises for either of the Parties for any damage suffered by the other Party as a result of this termination.
- 8.7 Fluent Wave agrees to package the Products properly (unless the nature of the Products prevents this) and to secure them in such a way that they will reach their destination in good condition during normal transportation. If Fluent Wave has made pallets, packing cases, crates, containers, etc. available for packaging and transport or has had them made available by a third party, whether or not under payment of a deposit, the Client is obliged (unless it concerns one-off packaging) to return these packages to the address given by Fluent Wave. If the Client fails to return these packages, the damage Fluent Wave suffers as a result thereof shall be compensated by the Client.
- 8.8 If for any reason the Client is unable to take delivery of the Products at the agreed time and these Products are ready for dispatch, Fluent Wave shall, if its storage facilities allow it, at the Client's request store the Products for a maximum period of one month, secure them and take all reasonable measures to prevent any deterioration in their quality until the Products can be delivered to the Client. Fluent Wave does not guarantee that the Products will be in the same condition when taken delivery at a later date. The Client is obliged to pay Fluent Wave the storage costs at Fluent Wave's usual storage rate or, in the absence thereof, at the storage rates usual in the industry, as from the time that the Products are ready for shipment.
- 8.9 Return Material Authorizations ("RMA") - returns of Products or part thereof, shall, for whatever reason, take place only following prior confirmation In writing by Fluent Wave to the Client and shall at all times be subject to further instructions and inspections from Fluent Wave to the Client.

9. Force Majeure

- 9.1 Neither Party shall be liable to the other Party in respect of any delay or failure to perform that results from any event or cause that is beyond the reasonable control of the Party obligated to perform (Force Majeure).
- 9.2 Force Majeure shall be deemed to exist on the part of Fluent Wave if fulfilling its obligations under the Agreement or the preparation thereof is prevented as a result of war, threat of war, civil war, terrorism, riots, acts of war, a pandemic or epidemic, financial crisis, fire, water damage, flooding, strike, strikes, lockouts, import and export restrictions, general transport problems, government measures, defects in machinery, disruptions in the supply of energy,

failure of the internet, failure of service providers, failure of the computer network, failure of telecommunication facilities, all this both in Fluent Wave's business and in the businesses of third parties, as well as during storage or transport, whether or not under its own management, and furthermore due to all other causes that arise through no fault of Fluent Wave.

- 9.3 If the delivery is delayed by more than two months due to Force Majeure, both Fluent Wave and the Client are entitled to regard the Agreement as terminated. In that case, Fluent Wave is only entitled to compensation for the costs it has incurred.
- 9.4 In the event that Force Majeure arises while the Agreement has already been partly carried out, the Client is entitled – if the remaining delivery is delayed by more than two months as a result of Force Majeure – either to keep the part of the Products already delivered and to pay the purchase price owed for that part, or to regard the Agreement as terminated, also with regard to the part of the Products already delivered, but subject to the obligation to return to Fluent Wave what has already been delivered at the expense and risk of the Client and subject to substantiation and demonstration by the Client that the part of the Products already delivered can no longer be used effectively as a result of the failure to deliver the remaining Products.

10. Payment conditions

- 10.1. The Client shall pay Fluent Wave's invoices in accordance with the payment conditions specified on the invoice or otherwise agreed upon between Parties (e.g. advance payment). If no specific conditions are stated on the invoice or is otherwise agreed upon, The Client will pay within thirty (30) days of the invoice date that is stated on the invoice by bank transfer. The Client is under no condition entitled to set off, to deduct a counterclaim or to suspend a payment on any ground. The value date on which a payment is received by Fluent Wave, as indicated on Fluent Wave's bank statements, will be regarded as the day on which the payment was made. Fluent Wave is at all times entitled to demand an advance payment, a down payment or a security as referred to in Article 12.
- 10.2. Every payment made by The Client shall – if applicable – first serve to settle the interest, collection costs, administration costs and any other costs owed to Fluent Wave, and subsequently to settle the outstanding invoices in order of age.
- 10.3. If the Client fails to pay any amount to Fluent Wave in due time, the Client is in default by operation of law, without a payment reminder, demand or notice of default being required. From that moment on, the Client is due statutory interest for commercial transactions, which is calculated cumulatively per month over the outstanding amount. Furthermore the Client is obliged to compensate all damages to Fluent Wave, in addition to the costs ascertained in court, for the legal costs actually incurred by Fluent Wave and the extrajudicial costs actually incurred, including the costs charged by party experts and/or court expert witnesses.
- 10.4. If the Client wants to make use of the storage possibilities as referred to in Article 8.8 shall remain obliged to pay the purchase price as specified in this Article 10.
- 10.5. Complaints regarding an invoice must be submitted In writing to Fluent Wave within eight (8) days of the invoice date. In the absence of a timely complaint, the Client shall be deemed to have approved and accepted the invoice.

11. Retention of title

- 11.1. Fluent Wave sells and delivers its products subject to retention of title (in Dutch: *eigendomsvoorbehoud*) within the meaning of article 92 Paragraph 1 and 2 of Book 3 of the Dutch Civil Code: all Products supplied by or on behalf of Fluent Wave shall remain Fluent Wave's property up to the point at which the Client has fulfilled all of its current and future obligations towards Fluent Wave. This retention of title applies for claims from Fluent Wave on the Client with regard to (i) payment obligations for delivered and to be delivered Products, (ii) payment obligations for services provided and work done by Fluent Wave for the benefit of the Client, (iii) any failure of the Client to comply with the Agreement and (iv) everything else that the Client owes or will owe to Fluent Wave.
- 11.2. As long as the retention of title as referred to in Article 11.1 is applicable, all Products shall be marked and stored separately from other products in such a way that they are easily and clearly identifiable as Fluent Wave's property. The Client is obliged to adequately insure all Products.
- 11.3. In case of non-payment of any amount owed and due by the Client to Fluent Wave and in the event that this Agreement ends other than by way of completion, Fluent Wave is entitled to demand the return of the Products that are subject to retention of title. Fluent Wave is authorized to offset any payments already made by the Client, without prejudice to Fluent Wave's rights to claim compensation for any loss or damages. The Client is obliged to fully cooperate to a demand by Fluent Wave to return the Products that are subject to retention of title. The Client grants Fluent Wave or anyone on its behalf permission to enter its grounds and buildings to take possession of its property.
- 11.4. The Client shall be entitled to sell or use the Products that are subject to reservation of title by Fluent Wave in its ordinary course of business, subject to the condition that the Client stipulates a similar retention of title with its clients as the retention of title in this Article 11.
- 11.5. The Client is under no circumstances entitled to exercise a right of retention (in Dutch: *retentierecht*) within the meaning of article 290 et seq. of Book 3 of the Dutch Civil Code regarding any Product in its possession.

12. Securities

- 12.1. If the Client forms a new product (partly) from the Products, that newly formed product shall deem to be formed on behalf and for the benefit of Fluent Wave until the Client has fulfilled all of its obligations vis-à-vis Fluent Wave arising from the Agreement. In that case, Fluent Wave will have all rights as the owner of the newly formed product until the Client has fulfilled its obligations.
- 12.2. As long as the Client has not fulfilled all of its obligations towards Fluent Wave arising from the Agreement, the Client shall, at Fluent Wave's first request and at the Client's expense, cooperate in establishing a non-possessionary and/or undisclosed pledge on the Client's assets within the meaning of article 237 and/or article 239 of Book 3 of the Dutch Civil Code, which assets shall reasonably amount to Fluent Wave's claim.

13. Liability limitation

- 13.1. Fluent Wave does not guarantee that the Products are suitable for the purpose for which the Client intends to use them, even if this purpose has been made known to Fluent Wave, unless the Parties have agreed otherwise.
- 13.2. Fluent Wave is neither contractually nor non-contractually liable for any damage of the Client that may result from any defects of the Products, except in the case of intent or gross negligence by Fluent Wave. Fluent Wave cannot be held liable if the Products do not meet the technical specifications, requirements or legislation imposed in the country where the Products are delivered.
- 13.3. Without prejudice to Article 13.2 of these Terms, any obligation from Fluent Wave to compensate damages of the Client is limited to direct damages, never exceeding the purchase price from the Agreement. Direct damages are understood to mean exclusively: (i) repair, recovery or replacement costs, (ii) the reasonable costs for establishing the cause and extent of the damage, (iii) reasonable costs incurred to prevent or limit the damage to the extent that the other party demonstrates that these costs have led to prevention or limitation of direct damage. In the case that an insurer pays any amount to the Client related to Fluent Wave's liability, Fluent Wave's compensation obligation will be limited to the amount paid by the insurer for the respective case or the amount covered by the insurance as long as this amount does not exceed the purchase price from the Agreement.
- 13.4. Any claim that the Client shall have against Fluent Wave on any ground whatsoever shall lapse after six (6) months after such claim arises.
- 13.5. The Client shall indemnify Fluent Wave from all third-party claims for compensation due to damage suffered by such third parties including claims due to product liability and the violation of intellectual property rights as a result of products or services, including Products supplied by the Client to such third parties.
- 13.6. The liability (limitation) provisions in these Terms shall also apply in favor of Fluent Wave's employees, auxiliary persons, agents, related companies and/or all other (legal) persons engaged by Fluent Wave in the execution of the Agreement.

14. Intellectual Property Rights

- 14.1. All intellectual property rights in respect of the Products delivered, developed or made available by Fluent Wave to the Client – including Documentation, inventions, ideas, software, data files, diagrams, equipment, samples, circuits, methods, set-ups, installations, solutions, analyses, designs, reports, quotations – are the exclusive property of Fluent Wave or the exclusive property of its licensor(s) or supplier(s).
- 14.2. Fluent Wave is not liable for the infringement of any intellectual property right or any other exclusive right resulting from any modification in or to a Product, any use or application of Products other than prescribed by Fluent Wave or other than Fluent Wave was entitled to assume under the Agreement, integration, use or application products – including (parts of) systems and networks – not sold or supplied by or on behalf of Fluent Wave, software modifications that has not been made by or on behalf of Fluent wave.

15. Termination

- 15.1. If the Client expects to be unable to fulfill its obligations under the Agreement, the Client is obliged to immediately notify Fluent Wave thereof In writing.
- 15.2. If the Client fails to fulfil its obligations in time and also fails to respond to a one-week notice of default, Fluent Wave is authorized to terminate (in Dutch: *ontbinden*) the Agreement without judicial intervention. In that case, the Client will be liable for the damage suffered by Fluent Wave, including but not limited to loss of profit, transportation costs and the costs of the notice of default.
- 15.3. If Fluent Wave takes extrajudicial measures in the event of non-performance by the Client, the full costs thereof will be fully due and payable by the Client.
- 15.4. Fluent Wave is authorized to terminate the Agreement without judicial intervention by means of a notification In writing if the Client is declared bankrupt, applies for a provisional suspension of payments or is subject to any debt rescheduling arrangement, or in the event of attachment, placement under guardianship or if the Client otherwise loses the power of disposition of its assets or parts thereof, without Fluent Wave being liable as a result of the termination. The Client shall be liable for any loss suffered by Fluent Wave, including loss of profit and transportation costs.
- 15.5. The Client is not entitled to annul the Agreement due to error (article 228 of Book 6 of the Dutch Civil Code) or to claim amendments of the Agreement due to unforeseen circumstances (article 258 of Book 6 of the Dutch Civil Code).

16. Applicable law and disputes

- 16.1. Dutch law (excluding its provisions on conflict of law) applies to these Terms as well as to all Offers from Fluent Wave, any Agreement entered into by or on behalf of Fluent Wave and any other legal relationship between Fluent Wave and the Client. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.
- 16.2. Any dispute arising from the Agreement shall be settled by the competent court in first instance of the district where Fluent Wave's main office is located, without prejudice to Fluent Wave's right to submit a dispute before the court competent under common competence rules.