

# Product Supply Terms and Conditions

## 1 INTERPRETATION

1.1 In these terms and conditions ("**Conditions**"), words and expressions shall have the same meanings as assigned to them in the FLUIDONE LIMITED Terms of Business, except or as additionally detailed below:

**"Insolvency Event"** mean any of the following: if the Customer disposes of the whole or a substantial part of its undertaking, property or assets, or stops payment of its debts, and/or is made insolvent or admits insolvency or files a winding up petition under the Insolvency Act 1986 (or equivalent in the applicable jurisdiction of the Party, where this is not the United Kingdom) or files a petition seeking to take advantage of any other law providing for the relief of debtors or make a general assignment for the benefit of its creditors or has a winding up petition filed against such other party which is not cancelled within 30 days.

**"Output Material"** means any Documents or other materials, and any data or other information provided by FLUIDONE LIMITED relating to the Products.

**"Pay as you use" license** means any license that is supplied on no Minimum Term basis.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2 SCOPE

2.1 These terms and conditions represent Service Specific Terms and Conditions for the supply of Products by FLUIDONE LIMITED.

2.2 Service Contracts are formed following the process described in clause 3 of the Standard Terms of Business.

## 3 SUPPLY OF THE PRODUCTS

3.1 FLUIDONE LIMITED agrees to provide the Products defined in the Service Contract. FLUIDONE LIMITED will be under no obligation to accept modifications or additions to the Products unless agreed in writing.

3.2 The Customer shall at its own expense supply FLUIDONE LIMITED with all necessary information required by FLUIDONE LIMITED for the provision of Products in a timely manner. The Customer warrants that the information supplied shall be accurate to the fullest extent possible. The Customer acknowledges FLUIDONE LIMITED will not process an Order Form if such information is inaccurate and shall not be held liable for a delay in the provision of Products in such instances. FLUIDONE LIMITED reserve the right to charge for additional time incurred on a time and materials basis in the event the project is delayed beyond a reasonable time, which shall be determined in FLUIDONE LIMITED' absolute discretion

3.3 FLUIDONE LIMITED shall have no liability for any such loss or damage, howsoever caused. All Output Material shall be at the sole risk of the Customer from the time of delivery to or to the order of the Customer.

3.4 FLUIDONE LIMITED may at any time by giving (where possible) reasonable prior notice to the Customer and at its own cost make any changes to the Products which are necessary to comply with any applicable safety or other statutory or regulatory requirements, or which do not materially affect the nature or quality of the Products.

3.5 Unless otherwise agreed, the Products are supplied in accordance with the manufacturer's standard specifications as these may be improved, substituted or modified.

3.6 FLUIDONE LIMITED will not be liable in respect of any loss or damage caused by or resulting from any variation for whatever reason in the manufacturer's specification or technical data of the Products. Further, FLUIDONE LIMITED will not be responsible for any loss or damage resulting from the curtailment or cessation of supply of Products following any such variation. FLUIDONE LIMITED will use its reasonable endeavours to advise the Customer of any such impending variation promptly upon receiving notice thereof from the manufacturer.

**COMMERCIAL IN CONFIDENCE**

# Product Supply Terms and Conditions

## 4 CUSTOMERS OBLIGATIONS

- 4.1 The Customer hereby accepts the Products and/or Service and agrees to make payments therefore in accordance with the Service Contract.
- 4.2 The Customer is deemed to have carefully selected the Products and be satisfied that they are fit for the desired purpose. FLUIDONE LIMITED will have made representation as to the suitability based upon information given by the Customer prior to acceptance. In making such representations, FLUIDONE LIMITED will rely on such information provided by the Customer and will not validate it nor take responsibility for it or the consequences of using it.
- 4.3 For the supply of equipment, the Customer, at his own expense, will suitably prepare the premises for the equipment and provide all necessary electrical and other installations and fittings and a suitable electrical supply.

## 5 DELIVERY OF PRODUCTS

- 5.1 FLUIDONE LIMITED will use reasonable endeavours to achieve the delivery date provided. However, any time or date named by FLUIDONE LIMITED for the delivery of any Products or Service is given as a forecast in the light of prevailing conditions and is given and intended as an estimate only.
- 5.2 If notwithstanding FLUIDONE LIMITED's reasonable endeavours, FLUIDONE LIMITED fails to despatch or deliver the Products or Service by such time or date, such failure shall not constitute a breach of the Service Contract and FLUIDONE LIMITED will not be liable to the Customer to make good any damage or loss whatsoever, whether arising directly or indirectly out of any delay in delivery.
- 5.3 In the event that, for any reason, FLUIDONE LIMITED is unable to supply any Products on or at the time or date named for delivery, such time or date shall be postponed for a reasonable period.
- 5.4 Delivery shall be taken by the Customer no later than the date named for delivery or, if no date has been named, at the date when FLUIDONE LIMITED is ready to deliver the Products.
- 5.5 In the event that, for any reason, the Customer fails to accept delivery of the Products or Service at the date aforesaid, then:
  - 5.5.1 FLUIDONE LIMITED reserves the right immediately or at any time thereafter terminate the Service Contract, such termination entitling FLUIDONE LIMITED to dispose of the Products and to obtain compensation from the Customer for loss of profit in addition to any other sums due under these Conditions.
  - 5.5.2 FLUIDONE LIMITED shall be entitled, at its discretion, to store the Products until the actual delivery or other disposal thereof and the Customer shall be liable to FLUIDONE LIMITED for the reasonable cost (including insurance) of so doing.
  - 5.5.3 Upon any subsequent acceptance of delivery by the Customer, FLUIDONE LIMITED shall be entitled to add to the price charged for the Products, a sum representing any increase in the costs of delivering the Products accruing between the delivery date named and the date of actual delivery.
  - 5.5.4 Upon any subsequent acceptance of delivery by the Customer, the price payable by the Customer in respect of the Products shall be increased to the price for the Products that prevails within FLUIDONE LIMITED at the date of such delivery.
- 5.6 These provisions shall be in addition to and not in substitution of any other payment or Charges for which the Customer may become liable in respect of his failure to take delivery at the appropriate date.

## 6 DOWNLOADS

- 6.1 Where the Products or any Product is a software item which FLUIDONE LIMITED has indicated will be delivered through direct download (either from FLUIDONE LIMITED's or the original manufacturer's site), delivery shall be deemed to have been effected when the Product in question is available on the relevant site, and the Customer has been informed of its availability together with all necessary security details necessary to effect its download.
- 6.2 Software products made available on a site for download by FLUIDONE LIMITED will be available for a period of at least 7 days. If the download is not effected within this period, additional charges may be made by FLUIDONE LIMITED for the continued availability of the product for download. Customer is responsible for any misuse of the security details provided by FLUIDONE LIMITED for access to the relevant site.

**COMMERCIAL IN CONFIDENCE**

# Product Supply Terms and Conditions

- 6.3 FLUIDONE LIMITED shall not be responsible nor liable for the availability of any internet link to a site, or the integrity or security of any internet link. Customer is responsible for ensuring that any Product downloaded is free from viruses or other malicious software.

## 7 REJECTION

- 7.1 The Customer shall examine the Products on arrival and notify FLUIDONE LIMITED by post within three (3) working days of delivery of any damage or short delivery of the Products specified in the Order which period the Customer agrees is a reasonable period given the nature of the equipment supplied by FLUIDONE LIMITED. If the Customer fails to comply with this clause FLUIDONE LIMITED shall not be liable to the Customer in respect of any shortage discrepancy, damage or fault, or in respect of any consequential losses or expenses arising therefrom.
- 7.2 The Customer hereby agrees that the retention of the Products without written to FLUIDONE LIMITED within 3 working days of delivery constitutes for all purposes an intimation by the Customer that the Products have been accepted and that given the nature of the Products supplied by the Company, 3 working days constitutes a reasonable period within which the Products should be rejected.

## 8 TRANSFER OF PROPERTY

- 8.1 Notwithstanding delivery to the Customer, ownership in the Products shall remain with FLUIDONE LIMITED until the Customer has paid the charges (whether or not due, invoiced or ascertained at the date of delivery). Until such payment the Customer shall:
- 8.1.1 take all necessary measures for the protections of the Products including maintaining adequate insurance therefore;
  - 8.1.2 not dispose of, whether by sale or otherwise, the Products or any part of them to any other party whatsoever;
  - 8.1.3 store all Products so that they are clearly identifiable as the property of FLUIDONE LIMITED.
- 8.2 So long as the property in the Products remains in FLUIDONE LIMITED, FLUIDONE LIMITED shall have the right without prejudice to the obligation of the Customer to purchase the Products, to re-take possession of the Products. The Customer herewith gives irrevocable permission to go upon any premises occupied by the Customer during normal business hours to effect such re-possession.
- 8.3 If any one of the Insolvency Events occurs, notice thereof is to be given immediately to FLUIDONE LIMITED by the Customer. Furthermore, all Products which are the property of FLUIDONE LIMITED pursuant to the provisions of Clause 8.1 and are in the possession of the Customer shall be delivered immediately to FLUIDONE LIMITED. Without prejudice to the Customer's duty to make delivery as aforesaid, FLUIDONE LIMITED upon receiving notice from whatever source of the happening of any one of the said events, shall also have the right during normal business hours to enter upon the said land or buildings of the Customer to take possession of FLUIDONE LIMITED's Products.
- 8.4 Until payment in accordance with Clause 8.1 is made, the Customer shall not create or allow to be created any right in the Products in favour of any third party. If the Customer breaches any of the provisions of this subparagraph the value and the outstanding amounts on the Order shall immediately and notwithstanding any contractual term to the contrary become payable.
- 8.5 Ownership of software products and/or other licensable products are not transferred to the Customer under the Contract.

## 9 LICENSING

- 9.1 The Products provided by FLUIDONE LIMITED under these Conditions (especially software, but not exclusively so) may be subject to certain conditions of use specified by the original manufacturer, and Customer agrees to be bound by and respect any such restrictions or conditions at all times. FLUIDONE LIMITED will endeavour to provide information to the Customer concerning these but it is Customer's responsibility to ensure that it is aware of and complies with any such restrictions and conditions.

# Product Supply Terms and Conditions

## 10 CANCELLATION OF CONTRACT

- 10.1 A Service Contract for Product Supply cannot be cancelled except with FLUIDONE LIMITED's consent and on terms that will indemnify FLUIDONE LIMITED against all loss.

## 11 CHARGES

- 11.1 Invoices will be raised upon delivery of the Products by the third party supplier to FLUIDONE LIMITED, unless otherwise specified in the Service Contract.
- 11.2 Where licences are supplied on a "pay as you use" basis, the Customer shall be invoiced monthly for the total number of licences within the calendar month to which the invoice refers to and in accordance with the terms and condition of the third party supplier.
- 11.3 FLUIDONE LIMITED reserves the right to review licence charges or licence commitment volume discounts offered to the Customer at any time and increase the charge accordingly where the agreed volume is not maintained by the Customer.
- 11.4 Unless otherwise stipulated by FLUIDONE LIMITED, the prices quoted are exclusive of carriage, insurance, duties and customs charges howsoever incurred; and any special packing or alteration or installation to the order required by the Customer.
- 11.5 Charges quoted are exclusive of VAT and local sales taxes (e.g. USA) which will be added at the current rate and tax point.

## 12 WARRANTY

- 12.1 FLUIDONE LIMITED will endeavour to ensure that the Customer receives the benefit of any guarantee or warranty which may have been given to FLUIDONE LIMITED by the third party supplier, which will be the sole warranty provided by FLUIDONE LIMITED.
- 12.2 The Customer is responsible for instructing itself on the terms of such guarantee or warranty and ensuring that any conditions are fully complied with.
- 12.3 The Customer must ensure that the Products are serviced, maintained and used properly and in accordance with FLUIDONE LIMITED's and/or the supplier's recommendations (and any guarantee or warranty) and are not fitted or used with any parts, accessories or ancillary equipment other than those recommended by FLUIDONE LIMITED or stated by FLUIDONE LIMITED to be suitable.
- 12.4 During the warranty period, no attempt must be made by the Customer or any third party to remedy any defect or to dismantle or otherwise tamper in any way with the Products except in accordance with specific instructions, directions and/or requests of FLUIDONE LIMITED.
- 12.5 Defective items for return must be registered with FLUIDONE LIMITED before return ([Project.Operations@FluidOne.Limited.co.uk](mailto:Project.Operations@FluidOne.Limited.co.uk), 01293 229151). The Customer must provide the original order no, product details, serial numbers and a description of the fault. FLUIDONE LIMITED will check whether the product is within its manufacturer's product warranty and if so will issue a Return Material Authorisation form (RMA) and details on where to return the goods. The RMA number must be marked on the packaging of the unit to be returned. FLUIDONE LIMITED accepts no responsibility for any information or data held with equipment returned to FLUIDONE LIMITED.
- 12.6 Where defective goods are returned to FLUIDONE LIMITED, transportation charges must be prepaid by the Customer.
- 12.7 FLUIDONE LIMITED will repair or replace defective goods in accordance with the applicable warranty. However, any Products claimed by the Customer to be defective shall be examined by FLUIDONE LIMITED. If such examination shows the claimed defects have been caused by misuse, neglect, accident, improper storage, installation or handling (in each case other than by FLUIDONE LIMITED or its agents) or by repair or alteration not effected by FLUIDONE LIMITED, any repair will only be carried out at the Customer's cost and with the written approval of the Customer. Customer shall pay to FLUIDONE LIMITED the cost (as certified by FLUIDONE LIMITED) of any examination of such Products where no defect is found or such defect as is revealed is not the responsibility of FLUIDONE LIMITED to rectify.

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# Product Supply Terms and Conditions

## **13 LIABILITY**

- 13.1 FLUIDONE LIMITED shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, or arising from their late arrival or non-arrival, or any other fault of the Customer.
- 13.2 In the event of any action for infringement or other proceedings being taken against FLUIDONE LIMITED in respect of any material used by FLUIDONE LIMITED in accordance with the Customer's instructions or with the Customer's consent (unless such usage was proposed by FLUIDONE LIMITED), the Customer agrees to indemnify FLUIDONE LIMITED against all costs or damages (including legal costs, disbursements and fees) which may be incurred by FLUIDONE LIMITED by reason of such action or proceedings.
- 13.3 Where FLUIDONE LIMITED is agreeing to supply Products acquired or licensed from a third party supplier, the Customer acknowledges that FLUIDONE LIMITED's obligations to supply and ability to deliver is dependent upon the performance of that supplier and that FLUIDONE LIMITED will, in no event, incur any greater liability to the Customer than the liability of that Supplier to FLUIDONE LIMITED.

## **14 STANDARD TERMS OF BUSINESS**

- 14.1 The FLUIDONE LIMITED Standard Terms of Business applicable at the date of contract are hereby incorporated by reference into any Service Contract entered into by FLUIDONE LIMITED which also incorporates these Product Supply Terms and Conditions.