



## Terms & Conditions

- 1. PURCHASE OF PRODUCTS/SERVICES.** FLOW agrees to provide Customer all of the Products and/or Services described on the preceding page(s) of this Agreement (including any purchase order or proposal attached hereto). Customer shall provide Compensation for the Products and Services to FLOW as described on the preceding page(s) of this Agreement. The parties hereto acknowledge the sufficiency of the mutual consideration provided by the parties pursuant to this Agreement. Notwithstanding anything in this Agreement to the contrary, FLOW shall not be responsible for any of the following: (i) products or services required as a result of Customer's fault (including, without limitation, failure to comply with this Agreement or instructions, instruction manuals or procedures provided by FLOW), (ii) products or services required as a result of the acts of any third party, or (iii) anything outside the scope of the description of the Products or Services set forth on the first page of this Agreement or the mutual agreement of the parties. If Customer desires for FLOW to provide products or services not described on the first page of this Agreement, Customer shall submit such request in writing to FLOW, and FLOW, in its sole discretion, may decide whether to accommodate such request (and the additional pricing that may be associated with such accommodations). Orders cancelled by Customer at any time prior to Delivery are subject to accrued costs for engineering, labor, materials, and a surcharge equal to twenty-five percent (25%). "Delivery" shall be defined as the earlier of when: (a) Customer receives the Products, or (b) the Products are provided to the shipper/freight carrier. Customer and FLOW shall work together in good faith to mutually agree upon an estimated date of delivery.
- 2. RISK OF LOSS TRANSFERS UPON DELIVERY.** Installation costs are generally not included in base pricing for Products. If, after substantial completion of any Products under this Agreement, Customer would instruct or request that FLOW not ship the Products, or otherwise refuse to take possession of the Products, Customer agrees to execute the Bill and Hold Letter attached hereto as Exhibit A. Customer hereby appoints FLOW as its true and lawful attorney-in-fact for the sole purpose of executing the attached Bill and Hold letter if Customer refuses or otherwise fails to execute the same within a reasonable time after request by FLOW. The foregoing power of attorney is coupled with an interest and shall be irrevocable. Furthermore, beginning thirty (30) days after any instruction or request not to ship substantially completed Products, FLOW shall be entitled to charge a monthly storage fee in the amount of three percent (3%) of the quoted price of the Products as set forth in this Agreement.
- 3. CONFIDENTIALITY.** FLOW may disclose to Customer certain non-public information relating to FLOW's business, including, without limitation, technical, marketing, financial, personnel, product, strategy, innovation, planning, and other information that is marked confidential, or which the Customer should reasonably know to be confidential given the nature of the information and the circumstance of disclosure ("Confidential Information"). Customer agrees that it will not disclose FLOW's Confidential Information except (a) to the employees, contractors, advisors or agents of the Customer to the extent that they need to know that Confidential Information for the purpose of performing the Customer's obligations under this Agreement or performing their obligations to the Customer, and who are bound by confidentiality terms with respect to that Confidential Information no less restrictive than those contained in this Section 2; or (b) as required to be disclosed by law, to the extent required to comply with that legal obligation, provided that the Customer will promptly notify FLOW of such obligation in advance.
- 4. WARRANTY.** FLOW warrants that the Products will function in all material respects in accordance with specifications for a period of ninety (90) days following Delivery. Customer will notify FLOW within such ninety (90) day period regarding any warranty issue. Failure to notify FLOW within such ninety (90) day period shall constitute a waiver of any warranty claims. Notwithstanding the foregoing, these limited warranties do not cover damages due to shipment, damage caused by misuse or operation of the Products not in conformity with any instructions/tutorials of FLOW or operating manuals, or damage by use of non-recommended chemicals. Products subject to terms of this warranty will be repaired or replaced at FLOW'S sole discretion. FLOW agrees to use its commercially reasonable efforts to provide the Services in a workmanlike manner. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, FLOW MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT OR THE PRODUCTS OR SERVICES, ALL OF WHICH ARE HEREBY DISCLAIMED BY FLOW AND EXCLUDED FROM THIS AGREEMENT. In the event the Products or Services fail to meet the warranty set forth in this Section 4, FLOW shall, without additional compensation, and at its own cost and expense, promptly correct or revise any errors, omissions or other deficiencies in the Products. The obligations of FLOW provided in this Section 4 shall survive acceptance of the Products by Customer and the termination or expiration of this Agreement. For purposes of clarity, the obligation of FLOW to correct non-conforming Products shall constitute the sole remedy of Customer for such non-conforming Products.
- 5. LIMITATION OF LIABILITY AND INDEMNIFICATION.** NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, FLOW'S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT, OR AT LAW WITH RESPECT TO ANY PRODUCTS OR SERVICES PROVIDED TO CUSTOMER (WHETHER NEGLIGENT OR OTHERWISE), WILL BE LIMITED TO FIFTY PERCENT (50%) OF THE TOTAL FEES PAID (LESS ANY REFUNDS OR CREDITS) BY CUSTOMER TO FLOW IN THE PRECEDING TWELVE (12) MONTHS. IN NO EVENT WILL FLOW BE LIABLE TO CUSTOMER UNDER, IN CONNECTION WITH, OR RELATED TO THIS AGREEMENT FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT FLOW HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE FOREGOING LIMITATIONS OF LIABILITY ARE A CONDITION AND MATERIAL CONSIDERATION FOR THEIR ENTRY INTO THIS AGREEMENT. CUSTOMER SHALL INDEMNIFY FLOW AND ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND AGENTS, ETC., FROM ANY LOSS, DAMAGE, COST OR EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING FROM ANY ACTIONS OR OMISSIONS OF CUSTOMER, INCLUDING, WITHOUT LIMITATION, CUSTOMER'S BREACH OF THIS AGREEMENT OR FAILURE TO FOLLOW THE INSTRUCTIONS OR WRITTEN INSTRUCTIONS/MANUALS OF FLOW RELATED TO THE PRODUCTS OR SERVICES, AS WELL AS ANY DAMAGES OR COSTS INCURRED BY FLOW RELATED TO ANY DEFECT IN THE PROPERTY WHERE SERVICES, IF ANY, ARE PROVIDED. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.
- 6. GENERAL.**

  - 6.1.** FLOW's relationship with the Customer under this Agreement shall be that of an independent contractor, and nothing in this Agreement or the arrangements for which it is made shall make FLOW an employee, joint venture, or partner of the Customer. All Compensation due to FLOW shall be paid in accordance with the terms provided on the first page of this Agreement (but in no event less than thirty (30) days after Delivery). FLOW may charge Customer a late fee with respect to any overdue balances. In addition, FLOW may charge Customer interest on the outstanding balance of any overdue fees, charges or expenses at a rate equal to 1.5% per month or the highest rate permitted by applicable law, whichever is lower. A service charge will be assessed with respect to any returned or dishonored checks of Customer. Customer will reimburse FLOW for all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts owed by Customer. All payment obligations will survive termination or expiration of this Agreement. Customer acknowledges and agrees that FLOW may cease providing Products or Services under this Agreement during any period in which the Customer has not paid any amounts due to FLOW. Customer agrees that its payment and other obligations under this Agreement are absolute and unconditional and not subject to any abatement, reduction, setoff, defense, counterclaim, or recoupment due or alleged to be due as a result of any past or future claim that Customer may have against FLOW or any of FLOW's affiliates. Except as otherwise provided herein, each party shall be responsible for the payment of its own expenses incurred in connection with this Agreement.
  - 6.2.** FLOW may terminate this Agreement immediately at any time upon notice to Customer. In such instance, FLOW shall only be responsible to Customer to provide Products or Services for which Customer has already paid FLOW. In no event will Customer be entitled to a refund. This Agreement shall be governed by and construed in accordance with the laws of North Carolina, exclusive of its rules governing choice of law and conflict of laws. If legal action is commenced by either party to enforce or defend its rights under this Agreement, such action shall be brought only in a court located in Brunswick or New Hanover County, North Carolina, and the parties agree to submit to the jurisdiction of such courts. This Agreement is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications, understandings (both written and oral) regarding such subject matter. A purchase order, email order, etc., issued by Customer to FLOW shall constitute acceptance of this Agreement and the terms and conditions set forth herein shall apply. To the extent there is a conflict between these terms and conditions and the terms set forth in any proposal, quote, or purchase order between the parties, the parties acknowledge and agree that the terms set forth in such proposal, quote, or purchase order shall control. This Agreement may only be amended or modified by a writing specifically referencing this Agreement which has been signed by authorized representatives of the parties.
  - 6.3.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable, that provision shall be severed or reformed to be enforceable, and the remaining provisions hereof and thereof shall remain in full force. No delay or omission by FLOW in the exercise or enforcement of any of its powers or rights hereunder shall constitute a waiver of such power or right. A waiver by FLOW of any provision of this Agreement must be in writing and signed by such party and shall not imply subsequent waiver of that or any other provision. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. PDF signature pages shall serve as original signature pages.
  - 6.4.** FLOW retains all intellectual property rights related to the Products or Services provided by FLOW to Customer, including, without limitation, rights related to designs, logos, copyrights, materials, manuals, data, computer software, trade secrets, product intelligence, machinery, know-how, or other materials or technology developed by FLOW, including any improvements or enhancements thereto (collectively "FLOW IP"). Without limiting the foregoing, FLOW retains all rights to any general data, processes, software (including codes) technology, means, templates, or know-how developed by FLOW which relate to, whether directly or indirectly, the Products or Services provided by FLOW to Customer. FLOW hereby grants Customer and its successors and assigns a license to use all FLOW IP in all Products and/or Services that are delivered to Customer under this Agreement or prepared by or on behalf of FLOW in the course of performing the Services or providing the Products, free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sub-licensable (except to successors or assigns), fully paid-up, royalty-free and perpetual basis to the extent necessary to enable Customer or its successors or assigns to make reasonable use of the Products or Services.
  - 6.5.** All notices under this Agreement shall be in writing and delivered by overnight delivery service or certified mail, return receipt requested, to the address of such party specified above (addressed in the case of FLOW to the attention of its Chief Financial Officer), or as specified by such party in writing to the other party after the Effective Date of this Agreement (with a courtesy copy provided via email). Notices delivered personally shall be deemed given upon documented receipt or refusal by recipient to accept receipt.
  - 6.6.** Customer agrees that it use its best efforts to cooperate with FLOW, and will execute and deliver any and all documents in addition to those expressly provided for herein that may be necessary or appropriate to afford FLOW the opportunity to adequately provide the Products and perform the Services, as applicable.
  - 6.7.** To the extent FLOW representatives are on site at Customer's facility, Customer covenants and agrees with FLOW to provide a safe work environment for FLOW's representatives at all times, free from hazards and conditions that may cause injury or illness to a FLOW representative. Customer covenants and agrees with FLOW that Customer (nor any of the Customer Representatives) will NOT provide gratuities, cash, gifts, or loans of any kind to any FLOW representative without permission from FLOW. Customer agrees that it will use its best efforts to cooperate with FLOW, and will execute and deliver any and all documents in addition to those expressly provided for herein that may be necessary or appropriate to afford FLOW the opportunity to adequately provide the Products or Services. FLOW shall not be in default by reason of any failure in performance of this Agreement, if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control or foreseeability of FLOW, including but not limited to, default by subcontractors or suppliers, failure of Customer to provide promptly to FLOW accurate information and materials, as applicable, inclement weather, acts of God or of a public enemy, health pandemics, acts of terrorism, United States or foreign governmental acts in either a sovereign or contractual capacity, labor, fire, or other inclement conditions, flood, epidemic, restrictions, strikes and/or freight embargoes, etc. Customer acknowledges and agrees that the Products purchased by Customer from FLOW pursuant to this Agreement contain proprietary, confidential and trade secret information of FLOW and therefore unless otherwise agreed to by the parties, such Products may not be sold, sublicensed, leased, rented, distributed, loaned or otherwise transferred by Customer or any of its employees, agents, affiliates or subcontractors to any third party without FLOW's prior written consent. Further, Customer agrees not to allow the Products to be viewed, analyzed, studied or inspected by any third party without FLOW's prior written consent. All proprietary notices incorporated in, marked on, or affixed to a Product shall not be altered, removed or obliterated. Customer shall not modify, reverse engineer, disassemble, reverse assemble or reverse compile any Product or part thereof (except related to necessary certification procedures that do not involve a competitor of FLOW). Customer agrees to be bound by all applicable third-party terms. Neither this Agreement nor any Product may be assigned, transferred, delegated or pledged by Customer (whether by operation of law or otherwise) without FLOW's prior written consent. Any assignment, transfer, delegation or pledge in violation of this Section shall be void and of no effect. This Section shall survive the termination or expiration of this Agreement.