



## CUSTOMER TERMS AND CONDITIONS

FC Version 1.0

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## Customer Terms And Conditions:

### 1. Applicability; Acceptance of These Terms and Conditions

- a) These Terms and Conditions (“**Terms**”) apply to the purchase of conveyor products and designed equipment (the “**Products**”) by the purchaser (“**Customer**”) from Fluent Conveyors, LLC (“**Fluent**”). “Customer” shall include Customer’s owners, members, employees, contractors, agents and guests. These Terms include and incorporate herein the Fluent Limited Warranty (available at [Fluent Conveyors Warranty Coverage - Fluent Conveyors](#)); Credit Application; Sales Proposal/Equipment Drawing; Purchase Order; Invoice, and Scope of Work Agreement (collectively, the “**Sales Agreement**”). These Terms and Conditions and the Sales Agreement are collectively referred to as the “**Agreement**”). Customer accepts these Terms by signing and returning Fluent’s quotation, by sending a purchase order in response to the quotation, by executing the Scope of Work Agreement or by Customer’s instructions to Fluent to ship the Product. Customer is hereby notified of Fluent’s express rejection of any terms inconsistent with the Agreement or to any other terms proposed by Customer in accepting the Agreement. Neither Fluent’s subsequent lack of objection to any terms, nor the delivery of the products or services, shall constitute an agreement by Fluent to any terms other than those set forth in the Agreement. Cancellation or modifications of all or part of any order are subject to Fluent’s prior written consent in each instance.
- b) **Purchase Through a Dealer:** Notwithstanding the foregoing, in the event the Products are being purchased through a third party Fluent-authorized dealer (“**Dealer**”) then the Agreement shall be deemed to be entered into by and between the Customer and the Dealer only and, except for this Section 1.b., all references to “Fluent” herein shall be replaced and superseded by “Dealer.” If Customer has purchased the Products through Dealer, Customer understands and acknowledges that Fluent is designing the Products with the understanding that the Dealer and Customer have the appropriate licenses, training and experience and insurance necessary to safely and legally perform installation and any related customer service. Fluent, shall not be liable and Customer agrees to hold harmless Fluent against any and all damages, costs, expenses and claims related in any way to any property damage, injury, or death related to users and/or installers, of Fluent’s Products, or any other third party, at any time. In addition to this Agreement, Customer may be required to review and sign additional documentation of the sale from Dealer.

## 2. Purchase Price; Tax; Freight

- a) Purchase Price. Prices in any Sales Agreement from Fluent are subject to change upon notice sent to Customer at any time before the Sales Agreement has been accepted. Prices for Products covered by this Agreement may be adjusted by Fluent, upon notice to Customer at any time prior to shipment, to reflect any increase in Fluent's cost of raw materials (e.g., steel, aluminum) incurred by Fluent after issuance of the applicable Sales Agreement.
- b) Freight. Freight charges will be included as a budgeted line item in any Sales Agreement. Freight charges added to the Invoice may include an amount greater than the freight charges paid to the carrier for handling and administrative expenses, and are not subject to discounts. If the cost of freight increases between the time Customer has accepted the Sales Agreement and the shipping date, Customer shall be responsible for the increase of such costs, which will be added as an overage to the Sales Agreement. Any freight increase shall be limited to documented increases in carrier charges or commercially reasonable handling costs incurred by Fluent after Customer's acceptance of the Sales Agreement. In the alternative, in the event of a freight increase, Customer may request in writing a credit for the original budgeted freight costs, and Customer shall be responsible for scheduling its own freight.
- c) Taxes. All stated prices are exclusive of any taxes (including but not limited to sales or use taxes), fees, duties, and levies, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under this Agreement (collectively, "Taxes"). Any Taxes related to the Products purchased pursuant to this Agreement are the responsibility of Customer and will be billed on each order unless Customer represents by checking the appropriate box on Fluent's website that it is tax exempt and uploads an exemption certificate acceptable to Fluent and the applicable taxing authorities. If any exemption certificate presented by Customer is held to be invalid, Customer will be charged all applicable taxes or, if Customer has already made with respect to the order, then Customer will pay Fluent the amount of the Tax and any penalties and interest related thereto.

## 3. Payment Terms

Unless otherwise set forth in the Sales Agreement, Customer will pay all invoiced amounts within the timeframe specified on Fluent's final invoice ("**Invoice**"). Unpaid amounts will accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate permitted by applicable law, from due date until paid, plus Fluent's reasonable costs of collection, including but not limited to all court costs and reasonable attorneys' fees. Fluent reserves all other rights granted to a seller under the Uniform Commercial Code for Customer's failure to pay for the Products or any other breach by Customer of the Agreement. In addition to all other remedies available to Fluent (which Fluent does not waive by the exercise of any rights

hereunder or the failure to exercise any right hereunder], Fluent may suspend the delivery of any Products if Customer fails to pay any amounts when due and the failure continues for five (5) days following Customer's receipt of notice thereof. Customer may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Fluent, regardless of whether relating to Fluent's breach, bankruptcy, or any other cause.

## 4. Delivery Shipping

- a) Fluent will deliver the Products within a reasonable time after receiving Customer's purchase order, subject to availability. The delivery date provided by Fluent for the Products is only an estimate and is reliant upon prompt receipt of all necessary information from Customer. If Customer causes Fluent to delay shipment or completion of the Products, Fluent will be entitled to any and all extra costs and expenses resulting from the delay. Fluent will not be liable for any delays, loss, damage in transit, or failure to deliver within the time estimated and the same will not be a material breach of the Agreement on Fluent's part. If the Products are available for shipping and the Customer requests that Fluent wait to ship for a period of more than two (2) weeks, Customer will be responsible for payment for storage fees in the amount of \$2,500.00 per month plus interest at the rate set forth in Section 3 above on any unpaid Invoice amounts.
- b) Unless otherwise agreed in writing by the parties, Fluent will deliver the Products FOB from the location of the Products (the "**Delivery Location**"), using Fluent's standard methods for packaging and shipping. Risk of loss or damage of the Products will transfer to the Customer as each shipment is placed in the hands of the carrier at the Delivery Location. If the carrier is unable to deliver the Products to the Customer's specified location because Customer has failed to provide appropriate instructions, documents, licenses, or authorizations, then: (i) risk of loss to the Products will be deemed to have passed to Customer; (ii) the Products will be deemed to have been delivered to Customer; and (iii) Fluent, at its option, may store the Products until Customer takes possession of them, at which time Customer will be liable for all costs and expenses resulting from the failure of delivery (including but not limited to the cost of storage and insurance). Title passes to Customer upon Customer's payment in full for the Products.
- c) In the event a shipment is reported lost, Customer and Fluent will cooperate to locate the lost shipment. If a shipment is not located within seven (7) days after Customer notifies Fluent in writing that the shipment was not delivered, Fluent will reasonably cooperate with Customer to submit a claim to the carrier and will ship new Products within a commercially reasonable time and Customer shall be responsible for payment for the replacement Products.
- d) Returns. If the Products are custom made, they may not be returned except as provided in Section 9 below. Conforming non-custom Products may be returned in the reasonable discretion of Fluent with all costs related to returning the Products to be paid by Customer.

## 5. Installation

Customer represents and warrants that: (i) it has or will have and maintain qualified staff and necessary equipment; or (ii) it will engage third-party service providers who have or will have and maintain qualified staff and necessary equipment, for the purpose of providing adequate installation and maintenance services for the Products. Fluent is not responsible for installation or regular servicing of Products. Unless otherwise expressly agreed in writing by a Dealer, Customer will be solely responsible and liable for obtaining and maintaining services related to installation and maintenance of any and all Products sold to Customer, whether such installation and maintenance services are performed by Customer or a third-party service provider. Customer shall, at its sole cost and expense, obtain and maintain a full understanding of the Fluent installation requirements and will be fully responsible for executing these guidelines. Fluent will not honor the Limited Warranty in the event any issues with the Products were the result of faulty installation and/or maintenance.

## 6. Accuracy of Information

Customer agrees to provide to Fluent complete and fully accurate drawings and specifications for the design and manufacture of the product Customer orders from Fluent. Any risk of liability, loss or damages related to incomplete or inaccurate drawings or specifications shall be born fully by Customer, and Customer agrees to indemnify, defend and hold harmless Fluent, for any liability, loss or damages caused by incomplete or inaccurate drawings or specifications..

## 7. Claims

The Invoice shall be presumed correct unless the Customer notifies Fluent of any claimed error or deficiency within fourteen (14) days of receipt. Any claim by Customer arising from faulty installation, improper unloading, building structural issues impacting installation, damage caused during unloading or installation, permitting, performance of the installation team or similar issues or damages in any way alleged to be caused by the installation of the Product(s) shall be commenced within thirty (30) days of Customer's receipt of the Products or shall forever be deemed waived and time barred, except as set forth in the Limited Warranty.

## 8. Limited Warranty

Fluent warrants to Customer that the Products will be subject to a limited warranty as set forth in in Fluent's Limited Warranty V1.0 ("Limited Warranty") [a copy of which has been provided to Customer and is available at [Fluent Conveyors Warranty Coverage - Fluent Conveyors](#)]. **CUSTOMER ACKNOWLEDGES SPECIFICALLY THAT IT HAS READ THE LIMITED WARRANTY AND IS AWARE OF THE TERMS THEREOF, INCLUDING BUT NOT LIMITED TO ALL REQUIREMENTS TO QUALIFY FOR THE WARRANTY, INCLUDING REGISTRATION AND NOTICE REQUIREMENTS.**

## 9. Inspection; Rejection of Products; Remedies

- a) As used in this Agreement, the term "**Non-Conforming Products**" means only the following: (i) the items shipped are different from those identified in Customer's purchase order or the Invoice; or (ii) Products that fail to conform to any warranty set forth in the Limited Warranty. Customer will inspect the Products within five (5) days following receipt thereof [the "**Inspection Period**"]. The Products will be deemed accepted at the end of the Inspection Period unless Customer notifies Fluent in writing of any Nonconforming Products and furnishes Fluent with written evidence or other documentation reasonably required by Fluent
- b) If Customer timely and properly notifies Fluent of any Nonconforming Products, then Fluent will, in its sole discretion: (i) replace the Nonconforming Products with conforming Products; or (ii) credit or refund the purchase price for the Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Customer related thereto. At Fluent's request, Customer will dispose of the Nonconforming Products or return the Nonconforming Products to Fluent at Fluent's expense. Upon receipt of the Nonconforming Products, Fluent will promptly refund the monies owed or ship the replacement Products to the Delivery Location at Fluent's expense, with Fluent retaining the risk of loss until delivery. Customer acknowledges and agrees that the remedies set forth in this Section 9 are Customer's sole exclusive remedies for the delivery of Nonconforming Products, and except as set forth in this Section 9, Customer has no right to return the Products to Fluent without Fluent's written authorization.

- c) The above-described procedures and remedies do not modify those procedures and remedies set forth in the Limited Warranty, which in the event of conflict, shall control.

## 10. Disclaimer of Warranties and Limitations of Liability

- a) THE REMEDIES SET FORTH IN THE AGREEMENT ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY FAILURE OF FLUENT TO COMPLY WITH ITS OBLIGATIONS UNDER THE AGREEMENT. FLUENT MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND FLUENT DISCLAIMS ALL OTHER WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL FLUENT BE LIABLE FOR INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE OR UNDER-UTILIZATION OF LABOR OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF FLUENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR TRANSPORTATION OR OTHER EXPENSES THAT MAY ARISE IN CONNECTION WITH SUCH PRODUCTS.
- b) EXCEPT FOR DEATH OR BODILY INJURY RESULTING FROM FLUENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, FLUENT'S TOTAL LIABILITY FOR ALL CLAIMS ARISING OUT OF, OR RELATING TO, THE PRODUCTS OR THIS AGREEMENT WILL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL PURCHASE PRICE FOR THE PRODUCTS GIVING RISE TO THE CLAIM.

## 11. Indemnification

- a) To the fullest extent permitted by law, Customer agrees to defend (by counsel reasonably acceptable to Fluent), indemnify, and hold harmless Fluent and its subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees (including any applicable import and export customs fees), or expenses (including reasonable attorney's fees and costs, expert witness fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) ("**Claims**") arising out of or occurring in connection with the breach of the Agreement, negligence or willful misconduct of Customer or its employees or agents, including but not limited to: (i) any misuse or modification of the Products by Customer or its employees or agents; (ii) any act (or failure to act) by Customer or its employees or agents in contravention of any safety procedures or instructions that Fluent provides to Customer or its employees or agents; (iii) the failure to store, install, operate, or maintain the Products in accordance with their respective operating instructions including, but not limited to, those claims, actions, demands, liabilities, costs and expenses, and attorney's fees and expenses derived, based upon or that result from property damage, personal injury or death.

- b) Fluent agrees to indemnify, and hold harmless Customer and its subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any Claims arising out of or occurring in connection with the gross negligence or willful misconduct of Fluent or its employees or agents related to the Products, to the extent not so indemnified by Customer.

## 12. Cancellation; Suspension Force Majeure

- a) An order once placed with and accepted by Fluent can be suspended or cancelled by Customer only with Fluent's written consent and conditioned upon Customer's agreement to pay all reasonable expenses incurred by Fluent in connection with such suspension or cancellation, including, but not limited to, expenses for repossession, fee collection, demobilization/remobilization, and costs of storage during suspension. In the event of suspension, the estimated schedule for Fluent to perform its obligations hereunder shall be extended for such period of time deemed reasonably necessary to overcome the effects of any suspension.
- b) In addition to the limitations set forth in Section 4 above, Fluent, shall not be liable for any damages or penalties as result of any failure to comply with the Agreement when such failure is due to any event of force majeure, which shall include, without limitation, accidents, strikes or labor disputes, war, insurrection, terrorism, acts of any government or government agency including local, state or federal governments or agencies, any state of emergency announcement, order or requirement, including for weather, epidemic/pandemic or other emergencies, acts of God, delays or failures in delivery from carriers, vendors or suppliers, shortages of materials, or any other cause beyond Fluent's reasonable control.

## 13. No License

The sale of the Products will not confer upon Customer any license, express or implied, under any patent, trademark, trade name, or other proprietary right owned or controlled by Fluent, its subsidiaries, affiliates, or suppliers; it being specifically understood and agreed that all such rights are reserved to Fluent, its subsidiaries, affiliates, or suppliers. Without limiting the foregoing, Customer will not, without Fluent's prior written consent, use any trademark or trade name of Fluent in connection with any the Products, other than with respect to the resale of the Products pre-marked or packaged by or on behalf of Fluent. Customer shall not copy or reverse-engineer any Products.



## 14. Disputes and Attorneys' Fees

In the event of any controversy or claim arising out of or relating to the Agreement, or the breach thereof, the parties shall first attempt to settle the dispute by informal mediation between the executives and/or officers of the parties and their respective legal counsel. If settlement is not reached via informal mediation, any unresolved controversy or claim shall be settled by arbitration administered by JAMS, Inc. (or other mediation and arbitration service by mutual written agreement of the parties) under its Comprehensive Arbitration Rules & Procedures (or those of another mutually-agreed upon mediation and arbitration service, as applicable). The number of arbitrators shall be one, to be selected according to the JAMS Rules & Procedures (or those of another mutually-agreed upon mediation and arbitration service, as applicable). The place of arbitrations shall be Denver, Colorado, and all proceedings shall be subject to the laws of the State of Colorado. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The cost of the arbitration proceeding and any proceeding in court to confirm or to vacate any arbitration award, as applicable (including, without limitation, reasonable outside attorneys' fees and costs), shall be borne by the unsuccessful party, as determined by the arbitrator and/or court, and shall be awarded as part of the arbitrator's award and/or judgment. This Section shall survive the termination or cancellation of the Agreement.

## 15. Compliance with Laws and Regulations

Customer shall comply with laws applicable to the installation, application, operation, use and disposal of Fluent's Products, including, but not limited to, those laws and regulations addressing licensing, permitting, the environment, the use, collection, storage, and disposal of hazardous materials, zoning, health, safety, labor, construction, domestic and international trade, intellectual property and trade secret, security and any other applicable laws and regulations.

## 16. Confidentiality

If Customer has entered into a Non-Disclosure Agreement ("NDA") with Fluent, Customer acknowledges the same and all terms thereof remain in full force and effect. If Customer has not entered into an NDA with Fluent, Customer agrees to the terms of Fluent's standard NDA [INSERT VERSION NO.], incorporated herein and available at [Mutual Non-disclosure agreement for Customers | Fluent Conveyors](#). "Confidential Information" is defined therein. Customer shall not use the Confidential Information for any purpose other than as provided in the NDA and in order to perform its obligations under the Agreement. Customer shall not copy or reverse-engineer any Products.

## 17. Binding Effect/Assignment

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective representatives, successors and permitted assigns. This Agreement shall not be assignable by either party, without the express written consent of the other party, which consent shall not be unreasonably withheld.

## 18. Disclaimer Regarding Products with SCAN~LINK Technology

If any Product purchased by Customer incorporates or includes SCAN~LINK technology, such technology is furnished by a third-party (SCAN~LINK Technologies Inc.). **WHILE THIS TECHNOLOGY IS INCLUDED AS PART OF THE PRODUCT'S FUNCTIONALITY, THE FLUENT DOES NOT OWN, DEVELOP, OR CONTROL THE SCAN~LINK TECHNOLOGY AND MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING ITS CONTINUED AVAILABILITY, PERFORMANCE, COMPATIBILITY, SECURITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.**

**THE CUSTOMER ACKNOWLEDGES THAT THE OPERATION OF FEATURES DEPENDENT UPON SCAN~LINK TECHNOLOGY MAY BE AFFECTED BY UPDATES, MODIFICATIONS, SERVICE INTERRUPTIONS, OR DISCONTINUATION BY THE TECHNOLOGY PROVIDER OR OTHER THIRD PARTIES. IN ADDITION, ANY FAILURE RELATED TO THE SCAN~LINK TECHNOLOGY MAY RESULT IN DEATH, PERSONAL INJURY OR PROPERTY DAMAGE. FLUENT SHALL NOT BE LIABLE FOR ANY LOSS OF FUNCTIONALITY, DATA, BUSINESS INTERRUPTION, DEATH, INJURY OR PROPERTY DAMAGE OR OTHER DAMAGES ARISING FROM THE PERFORMANCE, FAILURE, MODIFICATION, OR UNAVAILABILITY OF THE SCAN~LINK TECHNOLOGY.**

Use of SCAN~LINK technology may be subject to separate license agreements, terms of service, privacy policies, or other conditions established by the technology provider. The Customer is solely responsible for reviewing and complying with any such applicable terms.

**EXCEPT AS EXPRESSLY SET FORTH IN THE LIMITED WARRANTY, THE PRODUCT IS PROVIDED "AS IS" WITH RESPECT TO ANY THIRD-PARTY TECHNOLOGIES INCORPORATED INTO OR USED IN CONNECTION WITH THE PRODUCT, INCLUDING SCAN~LINK TECHNOLOGY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, FLUENT DISCLAIMS ALL IMPLIED WARRANTIES RELATING TO SUCH THIRD-PARTY TECHNOLOGY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND UNINTERRUPTED OPERATION.**

Nothing in this disclaimer limits any rights or remedies that cannot be excluded or limited under applicable law.

## 19. Miscellaneous

If any part of the Agreement shall be held to be illegal, void or unenforceable, the remaining portions shall remain in full force and effect. The failure of Fluent, to insist in any instance, upon the performance of any term of the Agreement, or to exercise any right thereunder, shall not be construed as a waiver of any of the other terms of the Agreement or the right to enforce the future performance or the future exercise of any other rights therein. The remedies provided for in the Agreement shall be the sole and exclusive remedies of Customer with respect to the subject matter thereof. The Agreement together with the NDA shall constitute the entire agreement between Fluent and Customer, and shall supersede all prior oral or written communications, agreements and negotiations with respect to the subject matter hereof. The Agreement may not be changed or modified orally, but may only be modified or amended, in whole or in part, in writing signed by both Fluent, and the Customer. Customer will not assign any quotation or accepted order for the Products, in whole or in part, without Fluent's prior written consent.

**Agreed and Accepted:****CUSTOMER****Fluent Conveyors, LLC**

By: [ \_\_\_\_\_ ]

By: [ \_\_\_\_\_ ]

Print Name: [ \_\_\_\_\_ ]

Print Name: [ \_\_\_\_\_ ]

Date: [ \_\_\_\_ / \_\_\_\_ / \_\_\_\_ ]

Date: [ \_\_\_\_ / \_\_\_\_ / \_\_\_\_ ]

*\* If Purchase is made through a Dealer, this Agreement to be signed by Dealer and not Fluent.***Dealer Name:**

By: [ \_\_\_\_\_ ]

Print Name: [ \_\_\_\_\_ ]

Date: [ \_\_\_\_ / \_\_\_\_ / \_\_\_\_ ]