

# Wavin

## Terms and Conditions of Sale

April 2022

Any supply or provision of Products and/or Services (each as defined below) by the member of the Wavin group specified in a Purchase Order (as defined below) ("Seller") to the person, firm or company who purchases the Products and/or Services from Seller ("Customer") (each of them also referred to as a "Party", and collectively as the "Parties") shall be subject to these general terms and conditions of sale (the "Terms and Conditions") and shall constitute the entire and exclusive agreement between the Seller and the Customer. Any previous agreements entered into by and between the Parties are hereby replaced by the Agreement (as defined below) and any additional or different terms proposed by Customer (including any general terms and condition of purchase by Customer) that the Customer seeks to impose or incorporate are expressly rejected, regardless of whether the Customer refers to those terms in a request for a quotation, other communication addressed to Seller or otherwise, and shall not be binding upon Seller unless expressly accepted in writing by Seller's authorized representative with specific reference to those terms.

### 1. Definitions

**1.1 In these Terms and Conditions, the following words and phrases shall have the following meanings:**

**Agreement:** means a Purchase Order, together with these Terms and Conditions.

**Applicable Law:** means any law, statute, order, decree, rule, injunction, license, permit, consent, approval, agreement, regulation, interpretation, treaty, judgment, or legislative or administrative action of a competent governmental authority, which applies to the supply or provision of Products and/or Services.

**Customer:** has the meaning given to it in the introduction.

**Pre-Fabricated Products** means any Products pre-fabricated or assembled in accordance with a specification supplied by the Customer.

**Products:** means goods, materials and other physical items Seller has agreed to supply to Customer under the Agreement.

**Purchase Order:** means the Customer's order for the Products or Services submitted in accordance with clause 2.

**Seller:** has the meaning given to it in the introduction.

**Services:** means the services (including digital services) Seller has agreed to perform for Customer under the Agreement.

Terms and Conditions: has the meaning given to it in the introduction.

### 1.2 In the Agreement,

(a) A reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its successors and permitted assigns.

(c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

(d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) A reference to writing or written includes fax and email.

(f) The introduction shall form part of these Terms and Conditions.

**1.3** In the event of a conflict between a term in a Purchase Order and these Terms and Conditions, the term in the document first mentioned shall prevail. In the event of a conflict between a translated term in a Purchase Order or these Terms and Conditions and the English equivalent, the English equivalent shall prevail.



## 2. Purchase Orders

**2.1** These Terms and Conditions apply to each Purchase Order. Any additional or different terms proposed by Customer (including any general terms and condition of purchase by Customer) that the Customer seeks to impose or incorporate are expressly rejected, regardless of whether the Customer refers to those terms in a request for a quotation, other communication addressed to Seller or otherwise, and shall not be binding upon Seller unless expressly accepted in writing by Seller's authorized representative with specific reference to this clause.

**2.2** Customer may submit Purchase Orders for Products and Services to the Seller. Each Purchase Order shall be deemed to be a separate offer by Customer to purchase Products or Services on the terms of this Agreement, which Seller shall be entitled to accept or reject at its discretion – also if a quotation from Seller is followed by a Purchase Order from Customer. A Purchase Order shall only be agreed, and an Agreement shall only be formed, upon the occurrence of the earlier of (a) Seller confirming a Purchase Order issued by the Customer in writing, or (b) Seller starting the execution of such Purchase Order. Without prejudice to the foregoing, the Seller may require the Customer to order a minimum quantity or order value of Products per Purchase Order.

**2.3** Purchase Orders may not be amended, cancelled or rescheduled without Seller's prior written consent. All Purchase Orders must be given in writing and must identify the Products and Services, unit quantities, part numbers, applicable prices and requested delivery dates of the Products or Services being purchased. Seller may designate certain Products and Services as non-cancelable and non- returnable ("NCNR") at its discretion, and the sale of such Products shall be subject to any special terms and conditions contained in Seller's confirmation to a Purchase Order or an NCNR letter (as applicable), which shall prevail and supersede any inconsistent terms and conditions contained herein or elsewhere. Unless Customer promptly rejects any such special terms and conditions, these shall be deemed accepted. Pre-Fabricated Products are non-cancelable and non-returnable in any event.

## 3. Prices

**3.1** The price of the Products and/or Services are those prices stated in the Agreement or, if no price is set out in the Agreement, the price set out in Seller's published price list in force as at the date of the Purchase Order. The Customer shall in addition pay the amounts as set out in the Agreement

(including those referred to under clause 5.1 and 11 of these Terms and Conditions). If, following the conclusion of the Agreement, a change occurs in raw material prices, labor or manufacturing costs, foreign exchange fluctuations, increases in taxes, wages, levies, premiums of any kind, whether or not imposed by the government, Seller shall be entitled to amend the agreed price unilaterally. If this right is exercised and Seller wishes to increase the agreed price within three months of the conclusion of the Agreement, the Customer shall have two (2) weeks to terminate the Agreement. The Customer shall not be entitled to claim any compensation from Seller on that account. Price quotations shall automatically expire in thirty (30) days from the date issued, or as otherwise stated in the quotation. The Customer agrees that the Seller may charge a handling fee for Purchase Orders below a minimum quantity or order value, which shall be included in the Purchase Order. Seller reserves the right to assess an expedite fee for Purchase Orders requested to be shipped prior to published or agreed lead times.

**3.2** The price in an Agreement assumes and is contingent upon the understanding that Seller's supply of any Products and/or Services under that Agreement to Customer are not subject to any direct or indirect obligations imposed on Seller and/or any offset mechanism or industrial participation or any other event that would directly or indirectly result in an increase of the cost price of the Products and/or Services ("**Additional Price Obligations**"). In the event that Additional Price Obligations are imposed, the prices, terms and conditions in the Agreement are subject to revision and Seller reserves the right to renegotiate the prices, terms and conditions in the Agreement with the Customer. Seller has no obligations to supply any Products and/or Services under an Agreement to Customer if Parties are unable to reach further agreement on revised prices, terms, and conditions due to Additional Price Obligations imposed.

## 4. Payment Terms

**4.1 Payment due date.** The Seller may invoice the Customer for the Products and Services prior to, on or at any time after the completion of the delivery. Payment will be due no later than 30 (thirty) calendar days from the date of the invoice unless a different time period is specified on the invoice or otherwise communicated to Customer in writing. Partial shipments may be invoiced separately. Seller may submit invoices electronically and is not required to provide a hard copy of the invoice.

**4.2 Invoice Currency,** Correction and Payment Payments must be in the currency specified in the invoice or as set out in the

Agreement, and must be made in full and in cleared funds via electronic fund transfer to a bank account nominated in writing by the Seller. Unless otherwise agreed to by Seller in writing, payment by credit card is not permitted. If Seller establishes a payment portal, Customer shall pay Seller through such portal if so directed by Seller. Disputes as to invoices must be bona fide and accompanied by detailed supporting information and are deemed waived 15 (fifteen) calendar days following the invoice date. Seller reserves the right to correct any inaccurate invoices. Any corrected invoice must be paid by the original invoice payment due date or the payment term included in the corrected invoice, whichever is later. Customer must pay the undisputed amount of the invoice within the original invoice payment due date or the payment term included in the corrected invoice, whichever is later. In the event that there is an overpayment, the overpaid amount shall be offset against future invoices issued by the Seller or otherwise refunded on terms determined by the Seller. All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by Applicable Law).

**4.3 Late Payment** If Customer fails to timely fulfill its payment obligations towards Seller or any of Seller's affiliates for any undisputed amount regardless whether under the Agreement or any other contract with Seller or any of Seller's affiliates, Seller may, at Seller's sole option and until all outstanding amounts and late charges, if any, are paid: (1) be relieved of its obligations with respect to guarantees, including without limitation, turnaround times, support for provision of spare parts and lead-times under any contract (including the Agreement); (2) refuse to process any credit to which Customer may be entitled under any contract (including the Agreement); (3) set off any credit or sum owed by Seller or any of Seller's affiliates to Customer against any undisputed amount owed by Customer to Seller or any of Seller's affiliates including but not limited to amounts owed under any contract (including the Agreement) between the Parties or with Seller's affiliates; (4) withhold performance and future shipments to Customer to which Seller or any of Seller's affiliates is obliged under any contract (including the Agreement); (5) declare Customer's performance in breach and terminate the Agreement and any or all other contracts with Seller or any of Seller's affiliates; (6) repossess Products for which payment has not been made; (7) deliver future shipments under any contract (including the Agreement) on a cash-with-or-der or cash-in-advance basis; (8) include late payment

charges on outstanding amounts at a rate of 2% per month or the maximum rate permitted by Applicable Law, if lower, for each month or part thereof; (9) charge storage or inventory carrying fees on Products; (10) recover all costs of collection including, without limitation, reasonable attorneys' fees; (11) if Customer fails to fulfill payment based on a payment schedule, accelerate all remaining payments and declare the total outstanding balance then due and owing; (12) implement that any turnover bonus or discount scheme is only due and payable after the Customer has fulfilled all its obligations towards Seller; (13) require the Customer to pay any judicial and extrajudicial costs which the Seller incurs, which shall amount to no less than the equivalent of 15% of the outstanding sum, subject to a minimum amount of EUR 250, or the maximum rate permitted Applicable Law, if lower; and (14) combine any of the above rights and remedies as may be permitted by Applicable Law. The above remedies are in addition to all other remedies available at law or in equity.

## 5. Delivery

**5.1 Delivery terms.** Parties will agree in the Purchase Order the delivery terms, including method of delivery. Unless otherwise agreed upon in the Purchase Order, delivery terms are EX Works (Incoterms 2020), to Seller's designated facility. Unless otherwise agreed in writing by the Parties, Customer is responsible for the costs of and arranging all insurance, transport, carriage, loading and offloading of the Products at the delivery location, duties, taxes, and completing all export clearance documents. Customer is responsible for all carriage, duties, taxes and other charges to enable import clearance. Customer will pay all transportation costs (including insurance, taxes, and customs duties) and will bear the cost of any claims to be filed with the carrier. When Customer arranges the export shipment, Customer will provide Seller evidence of exportation acceptable to the relevant tax and custom authorities. The costs for disposable packaging shall be deemed included in the price. The cost for reusable packaging is not included in the price and shall be charged separately.

**5.2 Shipment.** Unless Seller agrees in writing to a different delivery date, Seller will schedule delivery in accordance with its published lead-time. All shipping and delivery dates are approximate and are based upon the then-current availability of material including raw material, existing production schedules, and prompt receipt of all necessary information. Time for delivery shall not be of the essence. Seller will not be liable for any damage, loss, fault, or expenses arising out of delays in

shipment, including when caused by Force Majeure or the Customer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Products or Services. Orders will be considered completed upon shipment of the amount specified in the Purchase Order. Unless otherwise agreed, all Products will be shipped no later than one year from the date that Seller accepts the Purchase Order. Seller may in its sole discretion partially fulfill a Purchase Order and allocate Products among its customers. The Seller effect delivery of the quantities of Products ordered within the limits of standard pack quantities as used by Seller from time to time. If the Parties have agreed in writing that the Seller shall delivery the Products on a site of works, then the Customer ensure that the Products can be delivered at a point on a good hard ground nearest to the site and the Seller may refuse to unload the Products to sites considered in the discretion of the driver to be unsuitable (provided that such refusal shall still constitute delivery of the Products in accordance with the Agreement).

**5.3 Completion of Delivery.** Unless otherwise agreed in writing by the Parties, the Customer shall collect the Products from the Seller's premises at Seller's designated facility or such other location as may be advised by the Seller prior to delivery within three business days of the Seller notifying the Customer that the Products are ready. Delivery is completed when the Products are delivered in accordance with the agreed Incoterm or Customer has provided Seller with a duly executed proof of delivery, whichever is earlier. Seller shall not be required to tender delivery of any quantities of Products for which Customer has not provided timely shipping instructions. If Customer fails to fulfil an obligation towards Seller, including providing proof of delivery, or gives Seller good cause to assume that the Customer will fail to fulfil those obligations, Seller shall be entitled to repossess the Products supplied subject to retention of title, or arrange for this to be done, even if these are to be detached from other items, or calculate whatever additional tax may be applicable to the specific transaction. The costs of the repossession shall be borne by the Customer, without prejudice to any other rights which Seller may invoke. Furthermore, if the Customer fails to take or make arrangements to accept delivery of the Products or if delivery is delayed by the Customer or the Seller is unable to deliver because of inadequate access or instructions or failure of the Customer to obtain necessary instructions, consents or licenses, delivery shall be deemed to have occurred and the Seller may do any one or more of the fol-

lowing (without prejudice to any other right or remedy the Seller may have): (a) make additional charges for failed delivery; (b) allocate new delivery dates; (c) store the Products in accordance with clause 9; (d) invoice the Customer for the Products; (e) terminate the Agreement without liability on the Seller's part; and (f) recover from the Customer all costs and losses incurred by the Seller.

**5.4. Title and Risk of Loss.** Title to the Products shall not pass to the Customer until the Seller receives payment in full (in cash or cleared funds) for the Products and any other products that the Seller has supplied to the Customer in respect of which payment has become due. Until title to the Products has passed to the Customer, the Customer shall (i) store the Products separately from all other goods held by the Customer so that they remain readily identifiable as the Seller's property; (ii) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.

The Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Products. However, if the Customer resells the Products before that time, it does so as principal and not as the Seller's agent; and title to the Products shall pass from the Seller to the Customer immediately before the time at which resale by the Customer occurs.

Risk of loss shall pass to Customer upon delivery pursuant to clause 5.1, except that for export shipments, risk of loss shall transfer to Customer upon title passage.

## 6. Return, Refunds and Exchanges

**6.1 Returns.** Only Products originally shipped from Seller or from an authorized supplier (drop-ship) will be considered for return to Seller. Returns must be requested within 30 days of ship date, unless a longer period is agreed by the Seller in writing. Where a Customer requests return of Products to Seller, the Customer certifies that the Products were purchased from Seller and there has been no substitution of the Product by another supplier, distributor or other source of the Product. Any return must be in the original packaging, unused and in a condition no worse than that delivered to the Customer, except if approved for failure analysis/warranty evaluation by a Seller's sales representative via a Return Material Authorization (RMA) or equivalent applicable process. Pre-Fabricated Products cannot be returned or exchanged. The Customer shall return all

reusable packaging to the Seller in accordance with Seller's instructions from time to time, at the Customer's expense.

**6.2 Exchanges.** Any item for exchange must be in the original packaging, unused and in a condition no worse than that delivered to the Customer. Exchanges must be requested within 30 days of ship date, unless a longer period is agreed by the Seller in writing. Defective item(s) may be exchanged for the same item. Items purchased from Seller that have been used or altered and any items that have been sold as NC/NR will not be accepted for exchange, which shall include Pre-Fabricated Products.

**6.3 Return Freight / Restocking Fee.** Seller reserves the right to charge cancellation and restocking fees, at a minimum rate of 15% to be deducted from the Customer refund. Seller does not refund the (costs for the) original shipping and handling. Customer is responsible for all return freight charges. Seller does not accept cash on delivery shipments.

## 7. Products, Services and Warranty

**7.1 Products and Services.** Seller's Products are described in Seller's product catalogue (as amended from time to time). Seller shall be entitled to terminate the manufacturing or offering of any Products or Services or amend the specification of the Products or Services at any time and at its discretion, provided that Seller shall continue to supply provide any Products or Services as agreed upon in a Purchase Order.

**7.2 Warranty.** Seller's Products are warranted to be free from defects in material and workmanship, for the period of 12 (twelve) months from the date of shipment.

**7.3 Defects.** If Customer identifies a Visible Defect (as defined in clause 8.1) in a Product and informs Seller of that Visible Defect no later than seventy-two (72) hours from delivery and during the applicable warranty period set out in clause 7.2, and such Product is found by Seller to be defective at Seller's sole discretion, then Seller as the sole remedy shall repair or replace, at its sole discretion, either the Product or the defective part. Seller in no event will be responsible for seeking and finding the defective Products (e.g. opening walls to find a defective Product) and/or excavation and removal of defective Products or for restoring items in which the Products were installed.

**7.4 Products Manufactured by Third Party.** Products which may be manufactured by a third party and sold by Seller under

the Agreement shall not be subject to the warranties set out in this Agreement. To the extent the third party grants any warranty conditions to Seller, Seller shall pass the same warranties onwards to Customer, if any.

**7.5 Exclusion.** Subject to clause 7.9, the warranty as mentioned in clause 7.2 shall not apply to any defects that the Seller determines results from:

- i. Loss or damage in transit;
- ii. External causes such as accident, abuse, misuse, or problems with electrical power, or damage from animals;
- iii. Unreasonable or inadequate storage, maintenance, handling or installation, including installation other than as recommended by or on behalf of Seller;
- iv. Any alterations or repairs (or attempts to make alterations or repairs) made by a Party other than an authorized party;
- v. Customer's acts or omissions which expose the installation area where Products or Services are utilized ("System") to any environment not suitable for it, with the respective specifications, including without limitation, Customer's use of toxic, corrosive, or caustic liquids and/or gases, exposure to severe weather conditions and water;
- vi. Any defect or problems caused by any defect in any third-party hardware or software used in combination with the System;
- vii. Any usage that is not in accordance with the documentation provided by Seller;
- viii. The defect arising as a result of the Seller following any drawing, design or specification supplied by the Customer;
- ix. Fair wear and tear; and
- x. The Products differing from their description as a result of changes made to ensure they comply with Applicable Law.

**7.6 Disclaimer.** Seller excludes all other warranties, express or implied, including warranties of merchantability and fitness for a particular purpose and/ or warranty of non-infringement. Seller will not be liable to any party in strict liability, tort, contract, or any other manner for damages caused or claimed to be caused as a result of any design or defect in Seller's Products. Repair, replacement, partial or whole refund is the sole and exclusive form of remedy available to Customer in case of defective Products and the consequences that may arise from it.

**7.7** The Services provided by Seller are without any obligation to achieve a result and Seller's liability for the Services and any inaccuracies or omissions concerning the designs, advice, given dimensions, technical data, samples, inspections, drawings,



calculations, calculation –advice and/or other documentation provided by Seller in the context of the Service are entirely excluded if no corresponding Purchase Order has been entered into with the Customer in respect of the Service concerned or if the Services concerned have been provided free of charge.

**7.8** The Customer can no longer invoke a defect in the Services if it has not protested to Seller in this respect in writing within seven (7) days after the Service has been performed by Seller, or if the Customer could not reasonably have discovered the defect in the Service within this period, the Customer has not protested to Seller in writing in this respect within seven days after discovery of the defect in the Service.

**7.9** Notwithstanding anything to the contrary in the Agreement, all rights and claims of the Customer in respect of Products and Services, for whatever reason, will lapse if (a) Customer is late in notifying the Seller pursuant to this clause 7; (b) Seller has not been given the opportunity to investigate the merits of the complaint or have them investigated immediately on the location; and/or (c) in respect of Services, twelve (12) months have passed after Seller has provided the Service.

**7.10** The Customer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller or a member of its group for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of materials or specifications provided by the Customer to the Seller, in particular in connection with the pre-fabrication or assembly of Pre-Fabricated Products.

## **8. Complaints & Inspection**

**8.1** Upon delivery, the Customer must inspect the Products, or arrange for this to be done, in terms of volume, numbers and defects that may be established during a normal careful inspection (hereinafter "Visible Defects"). In this context, the Customer shall bear the risk of carrying out a random (and not full) inspection.

**8.2** Any complaints with regard to volume, numbers or Visible Defects must be reported in writing to Seller immediately after delivery and in all cases no later than 72 hours after delivery. The Customer must report defects other than Visible Defects in writing to Seller within seven days of their detection. The report must carefully describe the nature of and grounds for the complaint.

**8.3** If Seller delivers the Products on submission of a quality statement or regulations on the CE hallmark or its equivalent under Applicable Law and regulations, these Products shall be deemed to be good and sound, except where the Customer provides (technical) proof to the contrary.

**8.4** Where applicable, Seller shall make endeavors to have the delivered Products comply with the requirements of the Reach regulation (as amended from time to time) as published at [www.echa.europa.eu](http://www.echa.europa.eu) and all obligations arising out of this Reach regulation. Seller shall however not be liable to the Customer for any failure of Seller or of any other party to comply with the requirements and all obligations arising out of this Reach regulation.

**8.5** All Customer's rights and claims regarding the payment of a sum of money and/or the repair or redelivery of the relevant Products and/or the supplementation of a deficit, on whatever grounds, as well as any right of the Customer to terminate the Agreement, shall lapse a) in the event of a late report pursuant to clause 8.2 herein, b) if Seller has not been given the opportunity immediately to check the validity of the complaint on location, or arrange for this to be done, and/or c) if 12 (twelve) months have passed since the delivery date.

## **9. Storage**

If Customer fails to accept delivery of the Products, then, without prejudice to clause 5.2, and except where such failure or delay is caused by an event of Force Majeure (as defined in clause 14), Seller may store the Products until delivery takes place and charge Customer for all related costs and expenses (including insurance).

## **10. Design and Engineering Services**

**10.1** Seller will provide the Services in accordance with the requirements of good and sound workmanship. The Services shall be based on the information provided by the Customer, whereby the Customer guarantees the accuracy and completeness thereof. All consequences of inaccuracy and/or incompleteness of such information are entirely at the Customer's expense and risk.

**10.2** The Services are always project specific and based on the purchase and application of the Products produced and/or delivered by or on behalf of Seller. The Customer is not permitted to use the Services provided by Seller with the application of third-party materials, at any rate the consequences of such a course of action are entirely at the Customer's expense and risk.



**10.3 IP rights** (as defined in clause 18) relating to the Services, including associated methodologies, techniques, documents and other information or knowledge are and continue to be vested in Seller. To the extent necessary for this purpose, the Customer will obtain a non-transferable, non-exclusive and free licence for the agreed use of these rights for the duration of the Agreement.

## 11. Taxes

**11.1 Price excludes taxes.** Except as specified in the invoice issued by Seller, Seller's pricing excludes all taxes (including but not limited to, sales, use, excise, value-added, and other similar taxes), tariffs and duties (including but not limited to, amounts imposed upon the Product(s) or bill of material thereof under any Applicable Law (collectively, "Taxes").

**11.2 Customer pays Taxes.** Customer will pay all Taxes resulting from the Agreement or Seller's performance under the Agreement, whether imposed, levied, collected, withheld, or assessed now or later. If Seller is required to impose, levy, collect, withhold, or assess any Taxes on any transaction under the Agreement, then in addition to the purchase price, Seller will invoice Customer for such Taxes unless at the time of order placement, Customer furnishes Seller with an exemption certificate or other documentation sufficient to verify exemption from the Taxes.

**11.3 Withholding.** If any Taxes are required to be withheld from amounts paid or payable to Seller under the Agreement, (a) such withholding amount will not be deducted from the amounts due to Seller as originally priced, (b) Customer will pay the Taxes on behalf of Seller to the relevant taxing authority in accordance with Applicable Law, and (c) Customer will forward to Seller, within 60 (sixty) days of payment, proof of Taxes paid sufficient to establish the withholding amount and the recipient.

**11.4 Seller not Liable.** In no event will Seller be liable for Taxes paid or payable by Customer. This clause will survive expiration or any termination of the Agreement.

## 12. Export Control

Customer agrees to comply with all applicable export laws and regulations, including those of the United States and of the United Kingdom, to ensure Products, parts, and technology provided by Seller under the Agreement are not used, sold, disclosed, released, transferred, or re-exported in violation of such laws and regulations. Customer shall not directly or

indirectly export, reexport, or transfer any items or technology provided by Seller under the Agreement to: (a) any country designated under Applicable Law as a "State Sponsor of Terrorism" howsoever described; (b) any person or entity listed on a blocked, embargoed or prohibited list maintained by a competent authority under Applicable Laws; or (c) an end-user engaged in any nuclear, chemical, or biological weapons activities. If Products or Services to be exported outside the U.S. and/or EU, or other jurisdictions where laws require "dual use" statements, are considered or likely to be considered as "dual use", Customer shall (or shall cause the end user of the Products/Service) provide to Seller, promptly upon its request, an "End User Statement" in accordance with the applicable legal requirements. Seller shall not be liable to Customer for any delay and shall not be in breach of its obligations in the event of Customer's failure or delay in providing such statement.

## 13. Termination

**13.1 Notice of Termination.** Either Party may immediately terminate the Agreement, by giving written notice to the other Party if:

- i. the other Party commits a material breach of any term under the Agreement and (if such breach is capable of remedy), fails to remedy that breach within 30 (thirty) calendar days of written notice requiring it to do so;
- ii. The other Party fails to make any payment required to be made under the Agreement when due, and fails to remedy the breach within 3 calendar days after receipt of written notice of non-payment; or
- iii. Any insolvency or suspension of the other Party's operations or any petition filed or proceeding made by or against the other Party under any state, federal or other Applicable Law relating to bankruptcy, arrangement, reorganization, receivership, or assignment for the benefit of creditors or other similar proceedings.

**13.2. Change of Control.** In the event of a direct or indirect change in the senior management or the power to direct or cause the direction of the management and policies of the Customer (whether through the ownership of voting shares, by contract or otherwise), Seller may terminate the Agreement immediately by giving written notice.

**13.3 Effect.** Termination does not affect any of the Parties' rights and remedies that have accrued before the termination. The rights of termination provided in this clause 13 shall be without limiting a party's other rights and remedies as may be permitted by Applicable Law or in equity. Upon termination of the

Agreement, Customer shall at the election of the Seller either return to Seller or destroy all Seller's confidential information in its possession, and provide a certificate by an officer of Customer as to the destruction of all Seller's confidential information within 15 (fifteen) calendar days. The Customer shall have no rights to use any Seller's confidential information after the termination of the Agreement.

**13.4 Survival.** Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect, including in any event clauses 1, 7.10, 13.3, 13.4, 16, 17, 18, 19, 20, 21, 22, 27, 28 and 29.

#### 14. Force Majeure/Excusable Delay and No Hardship

**14.1 Force Majeure and other Exclusions of Liability.** Neither Party shall be liable to the other for, nor considered in breach or default of its obligations under the Agreement to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond the impacted Party's reasonable control, including but not limited to: (a) natural or man-made disasters, acts of God, acts or omissions of governmental authorities, fire, severe weather conditions, earthquake, strikes or other labor disturbances, flood, serious risk of kidnapping, war (declared or undeclared), armed conflict, acts or threats of terrorism, pandemics, epidemics, quarantines, regional, national or international calamities, civil unrest, riot, severe delay in transportation, or inability to obtain necessary materials or raw materials, components or services (all the foregoing defined as "Force Majeure"); (b) in the case of Seller, acts or omissions of Customer, including failure to timely provide Seller with any access, information, tools, material including raw materials, and approvals necessary to permit Seller group to timely perform the required activities, and including, without limitation, unknown physical conditions at the site of an unusual nature and differing materially from those ordinarily encountered and generally recognized as occurring in the work of the character provided for in the Agreement, shall also qualify as Force Majeure in favor of the Seller. The impacted Party shall promptly notify the other Party in the event of a delay under this clause. The delivery or performance dates shall be extended for a period equal to the time lost by reason of such delay, plus such additional time as may be reasonably necessary to overcome the effect of such delay. If Seller is delayed by acts or omissions of Customer, or by the prerequisite work of Customer's other contractors, Seller shall also be entitled to an equitable price adjustment. Under no

circumstances shall Customer's payment obligation be deemed excusable under this clause. Customer also represents and acknowledges that its experience and/or abilities are such, that it will meet its obligations even in cases of Force Majeure to the maximum extent possible and as permissible under Applicable Law.

**14.2 Right to Terminate.** If a delay arising through circumstances set out in this clause 14 extends for more than 90 (ninety) days and the Parties have not agreed upon a revised basis for resuming work, which may include an equitable price adjustment, then either Party (except where such delay is caused by Customer, in which event only Seller), upon 30 (thirty) days' written notice may terminate the Agreement. In such event of a delay, Customer shall pay Seller the pro-rated price for all work and undertakings performed before the effective date of termination.

#### 15. Environmental Health and Safety (EHS)

**15.1 Customer to provide safe work environment.** Customer shall take all actions necessary to provide a safe, healthy, and secure work environment, including transportation and accommodation, if applicable, for Seller's personnel. Customer shall inform Seller of any known risks, hazards, or changed conditions impacting worker health, safety, or the environment, including the presence or potential presence of hazardous materials, and provide relevant information, including safety data sheets, site security plans, risk assessments, and job hazard analysis.

**15.2 Customer to Provide Seller Site Access and Notification of Applicable Laws.** To evaluate risks associated with the rendering of services and performance under the Agreement, Customer shall provide Seller with reasonable access to review the site and related equipment. If Seller's work at the site is subject to local, state, or national EHS legal requirements that are not reasonably available, Customer shall notify and provide copies of the same to Seller.

#### 16. Limitations of Liability

**16.1 SPECIAL OR CONSEQUENTIAL LOSSES.** THE REMEDIES PROVIDED IN THIS AGREEMENT SHALL BE THE SOLE AND EXCLUSIVE REMEDIES OF CUSTOMER (INCLUDING THIRD PARTY CLAIMS). SELLER SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE SUCH AS (BUT NOT LIMITED TO), DELAY DAMAGE, DAMAGE DUE TO BUSINESS INTERRUPTION, LOST PROFITS, LOST SAVINGS,



LOST REVENUE, MISSED OPPORTUNITIES, LOSS OF GOODWILL, LOSS OF DATA, REPUTATIONAL DAMAGES OR FORFEITED PENALTIES OR FINES, WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY.

**16.2 TOTAL LIABILITY.** SELLER'S TOTAL LIABILITY UNDER OR IN CONNECTION WITH THE AGREEMENT FOR CLAIMS OF ANY KIND (INCLUDING THIRD PARTY CLAIMS) WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE ARISING OUT OF THE PERFORMANCE/NON-PERFORMANCE OR BREACH OF THE AGREEMENT, INCLUDING ANY OTHER COMPENSATION UNDER THE AGREEMENT, OR THE PROVISION OF ANY PRODUCTS OR SERVICES SHALL NOT EXCEED THE AMOUNT PAID OR PAYABLE FOR THE SPECIFIC PRODUCT OR SERVICE THAT GIVES RISE TO THE CLAIM.

**16.3 WILLFUL MISCONDUCT.** THE LIMITATIONS AND EXCLUSIONS SET FORTH ABOVE IN THIS CLAUSE SHALL ONLY APPLY TO THE EXTENT PERMITTED BY APPLICABLE MANDATORY LAW AND SHALL NOT APPLY IN CASE OF INTENT OR WILLFUL MISCONDUCT OF SELLER OR ITS MANAGEMENT.

#### 17. Indemnity

The Customer shall release, defend, indemnify and hold harmless the Seller, the Seller's affiliates, and each of their respective officers, directors, managers, employees, representatives, and advisors (the "Seller's Indemnitees") from and against any liability, loss, damage, claim, fine, penalty, judgment, settlement, cost and expense (including legal fees and expenses), including personal injury to or death of the Customer's employees or property damage, arising out of or in connection with the Agreement and the Customer's activities in connection with the Agreement, including (a) the handling, storage, marketing, sale, resale, distribution, use, or disposal of the Products or Services (whether used alone or in combination with other substances) by the Customer or by any third party at the Customer's facilities or by any third party at any location or (b) the failure of the Customer to comply with any instructions or regulations relating to (product) safety or Applicable Law. This clause shall survive the expiration, termination, or cancellation of the Agreement.

#### 18. Seller's IP Rights

Seller's intellectual property rights include, without limitation, all trademarks, trade names, logos, designs, symbols, emblems, distinguishing marks, slogans, service marks, copyrights,

patents, models, drawings, know-how, information, and any other distinguishing material of Seller, the Seller Group and Orbia Group, whether or not subject to registration or filing, including all registrations or applications to register any of the foregoing items; and all rights in the nature of any of the foregoing items, and all rights having equivalent or similar effect to, and the right to apply for any of, the rights referred to in this definition in any jurisdiction (hereinafter "IP rights"). Seller retains all IP rights in the Products and Services, and nothing herein shall be construed to grant Customer any right or license, express or implied, in the Seller's IP rights. In particular, Customer shall not use Seller's name, logo or other IP rights without Seller's prior written consent. Further, Customer will not do or fail to do anything that could infringe, damage, endanger or impair Seller's IP rights. In particular, Customer will not: (a) modify, remove or disfigure any markings or other means of identification of Products or Services delivered by Seller; (b) use Seller's IP rights in such a way that their distinctive character or validity may be affected; (c) use trademarks other than Seller's trademarks with regard to Products or Services delivered by Seller without Seller's prior express written consent, or (d) use trademarks or trade names similar to Seller's trademarks or trade names that may cause confusion or deception. For the purposes herein "Seller Group" shall refer to Wavin B.V. its subsidiaries and group of companies, and Orbia Group shall refer to Orbia Advance Corporation, S.A.B. de C.V. and its subsidiaries and group of Companies.

#### 19. Data Privacy

Each Party shall comply with all applicable data protection laws. Unless agreed otherwise by the Parties, Seller (or its subcontractors) will not process information relating to any identified or identifiable natural persons ("Personal Data") for Customer or on Customer's behalf. In the event that Seller processes Personal Data as part of its own legitimate business purposes, it will do so in accordance with the Seller's Privacy Notice which is available on <https://www.wavin.com/fi-fi/tietosuojailmoitus>

#### 20. Confidentiality

"Confidential Information" means the terms of the Agreement and all non-public information, technical data or know-how in whatever form and materials (including samples) concerning the business, Products, Services and/or activities of Seller and/or its affiliates disclosed or made available to Customer in relation to the Agreement, whether orally or in writing, in electronic

or other form, and whether or not marked as proprietary or confidential, and any information derived from the Confidential Information; provided that Confidential Information does not include information (i) known to Customer at the time of disclosure or rightfully obtained by Customer on a non-confidential basis from a third party; (ii) that is now, or hereafter becomes, through no act or failure to act on the part of Customer, generally known in the public; or (iii) that is independently developed by Customer without reliance on the Confidential Information, in each case as shown by contemporaneous documentary evidence. Customer shall not use the Confidential Information except for the purpose of exercising its rights or performing its obligations under the Agreement (the “**Purpose**”). Customer shall not disclose the Confidential Information to any third party except its employees and agents who have a need to know such information for the Purpose and who are bound by written nondisclosure obligations at least as stringent as those contained in the Agreement. Customer shall not reverse engineer any Confidential Information, including any samples, without permission of Seller. Customer shall take reasonable, prudent safeguards to prevent the use or disclosure of Confidential Information in violation hereof. Customer shall be responsible for the obligations of its employees and agents under the Agreement and Customer assumes liability for damages arising from any breach of this Agreement by its employees and agents, that would be a breach of this Agreement if committed directly by Customer, including without limitation, unauthorized use of Confidential Information. Upon Seller’s request, Customer shall promptly return all copies, whether written, electronic, or other form, of any such Confidential Information, or delete and destroy Confidential Information in a secure manner. Notwithstanding the foregoing, Customer may retain one copy of the Confidential Information for records management purposes, or copies in enterprise-wide archival back-up systems. Notwithstanding the destruction or retention of the Confidential Information, Customer shall continue to be bound by its obligations of confidentiality hereunder. In the event Customer is required to disclose any Confidential Information by order of a court or any government agency, by law, regulation, judicial or administrative process, Customer shall: (a) give prior written notice of such disclosure to Seller, if legally permitted; (b) reasonably cooperate with Seller, at Seller’s request and expense, to resist or limit such disclosure or to obtain a protective order; and (c) in the absence of a protective order or other remedy, disclose only that portion of the Confidential Information that is legally required to be

disclosed in the opinion of counsel and assure that confidential treatment will be accorded the disclosed information. Following termination, the obligations of Customer under this Agreement with respect to the Confidential Information will continue in full force and effect as follows: (i) in the case of any Confidential Information that constitutes a trade secret within the meaning of Applicable Law, for as long as such information remains a trade secret; or (ii) in the case of any other Confidential Information or materials, for a term of five (5) years from the date of disclosure. Seller shall be entitled to injunctive relief for any breach or threatened breach of this provision without the requirement of posting bond or proving damages.

## 21. Customer Data

**21.1** Customer owns Customer Data and Seller Granted License. Seller acknowledges that, as between Seller and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data (as defined below). Customer hereby grants to Seller (i) a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up, worldwide license to reproduce, distribute, modify, and otherwise use and display the Customer Data for internal research and product/service development purposes and to provide Products and Services to Customer, and (ii) a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics. “**Customer Data**” means, other than aggregated statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted or made available by or on behalf of Customer, or a user of Customer’s Product or Services incorporating the product or services object of the Agreement, to Seller that is generated by the Product or Service or use of the Product or Service, provided that Customer Data excludes any Personal Data. Nothing in the Agreement shall be deemed to limit any rights granted from Customer to Seller in any other agreement.

**21.2** Customer Feedback If Customer or any of its employees or contractors suggests or recommends changes to the Product or Services, including without limitation, new features or functionality relating thereto, or shares any comments, questions, suggestions, or the like (“**Feedback**”), Seller is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Seller on Customer’s behalf, and on behalf of its employees,



contractors and/or agents, all rights, title, and interests in and to, the Feedback and Seller is free to use, without any attribution or compensation to any Party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Seller is not required to use any Feedback.

## 22. Aggregated Statistics

Notwithstanding anything to the contrary in the Agreement or any other non-disclosure agreement between the Parties, Seller may monitor Customer's use of the Product or Services and collect and compile Aggregated Statistics (as defined below). As between Seller and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Seller. Customer acknowledges that Seller may compile Aggregated Statistics based on Customer Data collected from Customer's (or its customers') use of the Product or Services. Customer agrees that Seller may (i) make Aggregated Statistics publicly available in compliance with Applicable Law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under Applicable Law, provided that such Aggregated Statistics do not expressly identify Customer. "Aggregated Statistics" means data and information related to Customer's (or its customers') use of the Product or Services that is used by Seller in the aggregate and not directly identifying Customer, including to compile statistical and performance information related to the provision and operation of the Product and Services of Seller.

## 23. Compliance with Applicable Law

**23.1 Industry Standards.** The Agreement is based on Seller's design, manufacture, testing, and delivery of the Products and Services pursuant to: (i) its own design criteria, manufacturing processes, and procedures and quality assurance program; (ii) those portions of industry specifications, codes, and standards in effect as of the date of entering into the Agreement as are specified to Seller; (iii) the Applicable Law; and (iv) any mutually agreed upon written terms and specifications set forth in the Agreement. If any of the foregoing changes, Seller may unilaterally change the Products and Services to ensure compliance with any of the foregoing. In addition, Seller shall be entitled to amend the agreed price, delivery/performance date or guarantees unilaterally. In the event any such change prevents Seller from executing its obligations without breaching Applicable Law or makes Seller's execution of its obligations unreasonably burdensome or unbalanced, Seller shall also have the right to terminate the Agreement without any liability.

**23.2 Compliance with Applicable Laws** Notwithstanding any other provision of the Agreement, the Parties shall at all times comply with all Applicable Law in the performance of the Agreement.

**23.3 Anti-Bribery and Corruption.** The Customer shall ensure that it, its directors, employees or subcontractors will not offer, promise, or give any undue pecuniary or other advantage of any kind to employees of the Seller or third parties (including civil servants) in order to obtain or retain a business or other improper advantage, in connection with the Agreement. The Customer will comply with all applicable anti-bribery legislation (including, but not limited to the US Foreign Corrupt Practices Act and the UK Bribery Act) and have put into place adequate preventative measures to ensure that employees and subcontractors comply with the applicable legislation.

## 24. Assignment, Novation & Subcontracting

**24.1** Customer may not assign or novate the Agreement, in full or in part, including through change of structure or ownership of the Customer, without the prior written consent of Seller, which consent shall not be unreasonably delayed or withheld, provided that Seller shall be entitled to withhold such consent in any event if the assignee/novatee lacks adequate financial capability, is a competitor or potential competitor of Seller or its affiliates, causes Seller group to be in breach of Applicable Law, and/or does not meet Seller's code of ethics. Seller may assign or novate to third parties the Agreement, in full or in part, and the Seller will give written notice to Customer in such event. The Parties agree to execute such documents as may be necessary to give effect to the permitted assignments or novations set forth in this clause. In the event of a novation or assignment by Customer, Customer shall cause the novatee/assignee to provide additional payment security at Seller's reasonable request. Any assignment or novation in violation of the above shall be void and without effect for the Parties.

## 25. Subcontractors

Seller has the right to subcontract its obligations under this Agreement. Use of a subcontractor will not release Seller from liability under this Agreement for performance of the subcontracted obligations.

## 26. Changes

Each Party may at any time propose changes in the Agreement in the form of a draft change order. Neither Party is obligated to proceed with the change order until both Parties agree to such

change in writing. Unless otherwise agreed by the Parties, pricing for additional work arising from such changes shall be at Seller's then-current time and material rates.

## 27. Governing Law

The Agreement shall be governed by and construed in accordance with the laws of the jurisdiction in which the Seller is incorporated, excluding in any case conflict of law rules. The Parties acknowledge and agree that the applicability of the United Nations Convention on Contracts for the International Sale of Goods (often referred to as the Vienna Sales Convention) is expressly excluded.

## 28. Dispute Resolution

Any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non contractual disputes or claims) shall be subject to the exclusive jurisdiction of the competent courts in the jurisdiction and district where the Seller is incorporated and the Parties hereby irrevocably submit to the exclusive jurisdiction of those courts for these purposes.

## 29. General Clauses

**29.1 Entire Agreement.** This Agreement represents the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Any previous agreements entered into by and between the Parties are hereby replaced by this Agreement.

**29.2 No Oral Modification.** No modification, amendment, rescission, waiver, or other change shall be binding on either Party unless agreed to in writing by their authorized representatives. Each Party agrees that it has not relied on or been induced by any representations of the other Party not contained in this Agreement.

**29.3 Severability.** The invalidity in whole or in part of any part of the Agreement shall not affect the validity of the remainder of the Agreement. In the event any provision of the Agreement is held invalid or unenforceable, only the invalid or unenforceable part of the provision shall be severed, leaving intact and in full force and effect the remainder of the sentence, clause, and provision to the extent not held invalid or unenforceable.

**29.4 Headings.** Headings of clauses and paragraphs herein are for convenience of reference only and shall not control the meaning or interpretation of any provision of the Agreement.



Wavin on osa Orbiaa, ryhmää yrityksiä, jotka yhdessä tekevät töitä selättääkseen monitahoiset maailmanlaajuiset haasteet. Meitä yhdistää yhteinen tarkoituksemme: Edistää elämää ympäri maailmaa.



**Wavin Finland Oy** | Visiokatu 1 | 33720 Tampere  
Puhelin 020 128 5200 | [www.wavin.fi](http://www.wavin.fi) | [myynti@wavin.com](mailto:myynti@wavin.com)

Vuosien varrella kertynyt tietotaito ja sertifioitu laatujärjestelmä varmistavat tuotteidemme laadun, luotettavuuden sekä soveltavuuden Suomen vaativiin olosuhteisiin. Wavin Finland Oy on osa kansainvälistä Wavin-konsernia, jolla on toimipisteitä 25 maassa. Suomessa meillä on pääkonttorimme lisäksi kaksi tuotantolaitosta, neljä myyntikonttoria sekä koko maan kattava jälleenmyyntiverkosto.

© 2022 Wavin Finland Oy

Pidätämme oikeudet muutoksiin ilman ennakoilmoitusta. Jatkuvan tuotekehityksen vuoksi tuotteiden teknisissä yksityiskohdissa tapahtuu muutoksia. Tuotteet on asennettava asennusohjeiden mukaan.