



## Client Subscription Terms and Conditions

These Terms and Conditions (the “**T&C**”) apply to, and are incorporated into, each Client Subscription Order. All capitalized terms not defined herein have the meaning given to them in the applicable Client Subscription Order. If there is a conflict between these T&Cs and a Client Subscription Order (collectively, the “**Agreement**”), the Client Subscription Order will take precedence.

### 1. The Flow Solution

**1.1 General.** To allow international customers to view product prices in their preferred currency and place orders (“**Customer Orders**”) for Client products through Flow’s software-as-a-service platform and solution (the “**Flow Solution**” or “**Solution**”), Client and/or Client’s third party developer will implement and incorporate appropriate and required Solution related interfaces into Client’s existing website and order management system in accordance with Flow’s technical documentation and with Flow’s standard set-up and technical support described below (the “**Flow-Enabled Client Website**”). Flow agrees to use commercially reasonable efforts to support and offer the: (i) delivery destination options as displayed in Console (“**International Geographies**”), (ii) billing currencies (“**International Currencies**”), (iii) international shipping options (“**Logistics Providers**”), (iv) duty and tax calculations and estimates and (iv) international payment options (“**Payment Options**”), and (v) other available functions and features in the Solution for applicable International Geographies, in each case, as described in Flow’s then current Solution documentation available at <https://docs.flow.io> and <https://console.flow.io> (together the “**Documentation**”), for Customer Orders processed through the Solution and/or Flow-Enabled Client Website pursuant to this Agreement. Flow will be the merchant of record and collect payment for Customer Orders processed through the Solution, unless otherwise stated in the Consumer T&Cs (as defined below).

**1.2 Set-Up and Integration Support.** Flow will provide set-up support documentation and reasonable assistance services to support the set up and integration of the Flow-Enabled Client Website and Solution. Client will reasonably cooperate and assist Flow in maintaining integration and interoperability between each Party’s respective environments. During the Subscription Term, Client may elect to implement and/or use any method of systems exchange data made available by Flow for the purpose of integrating the Flow-Enabled Client Website.

**1.3 Product Information.** Client will send Flow accurate and sufficient product information in formats and at a frequency defined by the Documentation and interfaces (“**Product Information**”). Product Information will include product related attributes as required to accurately classify products and identify restricted items (including but not limited to country of origin and materials, and dutiable prices for the purposes of calculating commodity taxes, if Client offers products at a promotion price or promotional duty, tax or shipping rates or for other applicable situations). If Client is using the Solution to facilitate or manage logistics, Client will also provide additional data related to the weight, packaged dimensions and packaging materials, as required to estimate shipping costs (such data is “**Shipping Information**” and part of the Product Information defined above). Subject to the accuracy, sufficiency and completeness of the Product Information, Flow will, for each product, use commercially reasonable efforts to determine if any customs, export, legal, regulatory, value-based or transportation restrictions exist. Flow will enforce product restrictions made known through the Console by Client to Flow, and Flow will identify such products as restricted products that are, to the best of its knowledge, considered illegal, dangerous, perishable, misrepresented, offensive and/or distasteful in its sole discretion, or which are deemed restricted by customs brokers, payment processors and/or end delivery carriers in the applicable International Geography(ies).

**1.4 Customer Experience Management Console.** Flow will provide access and credentials to Client for its web-accessible business management application (the “**Console**” which is part of the Solution) as part of set up. Flow will provide orientation and education to a Client designate on the features and proper usage of the Console. Through the Console’s functions and features, Client designated users will be able to (i) upload a catalog to make available product for sale (ii) identify product restrictions, (iii) set price rounding functions, (iv) set the desired local currency, (iv) chose Duties Delivered Paid or Unpaid, (v) select payment methods, (vi) select ship carriers and ship rules, (vii) define and price ship tiers and (viii) track orders, in each case, as described in the Documentation and as applicable.

**1.5 Quotes.** For customers who initiate a checkout through the Solution or Flow-Enabled Client Website, Flow will calculate and guarantee (if Client is using all Solution modules and to the extent it has provided accurate and comprehensive Product

Information) all-inclusive cost quotes for the purchase and fulfillment of Client product(s) to International Geographies (“**Fully Landed Cost Quotes**”). Fully Landed Cost Quotes will be inclusive of Flow's estimate of (i) the duties and/or taxes that will be required to be paid as a result of shipping to the desired address in the International Geography, if applicable and requested and (ii) the amounts Flow charges to export, clear customs, transport and deliver, as applicable, any resulting parcel(s) to the desired address in the International Geography and guarantee the Fully Landed Cost Quote. Once accepted by the customer, Fully Landed Cost Quotes will be guaranteed until the customer's receipt of their Customer Order if Client is using all Solution modules and has provided accurate and comprehensive Product Information.

**1.6 Transactions.** The Parties acknowledge that Client is making available Client products to customers outside of the U.S. using the Solution, and that when a customer places (and Flow accepts) an order, that customer will be placing their order with Flow. Flow will purchase the product that the customer has selected from Client (and Client will sell and transfer title to that product to Flow) for the sole purpose of immediately reselling it to that customer for an amount equal to the agreed-upon Fully Landed Cost Quote. Client will cause the customer to agree to and be bound to Flow's designated then current customer terms and conditions (the “**Customer T&Cs**”) relating to Customer Orders for Flow to fulfill its obligations and comply with any credit card association obligations regarding the presentation and disclosure of the merchant of record. The then current Customer T&C's is included at [www.flow.io/policies/consumer-terms](http://www.flow.io/policies/consumer-terms) Unless otherwise agreed and approved by the Parties, the Customer T&Cs will, among other things, inform the customer that the transaction will be between the customer and Flow, that Flow will be purchasing the products from Client for the purpose of selling such products to the customer for the amounts specified within the Fully Landed Cost Quote, and that title of merchandise will transfer from Client to Flow and will then transfer from Flow to customer in the USA per the Customer T&C's.

**1.7 Logistics and Customs Clearance.** Flow will be named as the exporter of record on all physical or electronic documents relating to Customer Orders processed by Flow if Client is using Flow's recommended carrier and the shipping rate card. Flow will be responsible for the timely remittance of duties and taxes owed to the appropriate governmental authority in connection with delivery duty paid imports unless provided for otherwise in the Customer T&Cs. In the case of the carrier being unsuccessful with delivery to the customer, Flow will request Client either authorize a return or authorize Flow to attempt the re-shipment of the parcel to the same or a new address at Client's cost.

**1.8 Shipping; Product Risk of Loss or Damage.** Customer Orders will be shipped by Client through transportation and shipping carriers at rates set forth in Flow's then current shipping rate tables or as otherwise agreed. In no event is Flow responsible for the acts or omissions of any carriers, including any loss or damage to products. If product is lost or damaged, Flow file an insurance claim with the carrier if the carrier is providing insurance and remit to Client any amounts received as a result of that claim. As between the Parties, Client is responsible for all risk of loss or damage relating to the products and will re-process and re-fulfill orders and process and accept returns, as applicable, and for any additional shipping, handling or other processing costs relating thereto.

**1.9 Customer Payment Options.** Flow agrees to offer Payment Options and facilitate settlements with customers for Customer Orders if Flow is the merchant of record in accordance with the Agreement, Documentation, and Consumer T&Cs. Any amount billed for a given parcel will be equal to the pro-rated portion of a Fully Landed Cost Quote that the product(s) contained within such parcel represent. Flow will be responsible for all chargebacks and associated costs, provided that Client reasonably assists Flow in preventing and mitigating such chargebacks and provides any reasonably requested information.

**1.10 Communications.** Unless otherwise agreed, Flow or its agents may communicate with customers, which may include order acknowledgement, order confirmation, shipment confirmation, returns authorization and instructions or other customer service requirements.

**1.11 Prohibited Goods.** Client will ensure that it does not offer, sell, or ship any products or samples (i) not legally allowed to be sold, including regulated or prohibited drugs, weapons, or other product subject to import/export control licenses or restrictions, (ii) made from any type of endangered wild plant or animal that is in the list of species protected by the Convention on International Trade in Endangered Species, (iii) that fall into one or more of the nine United Nations hazard classes, (iv) that are classified as fish or wildlife as determined by the US. Fish & Wildlife department, (v) that are perishable according to any U.S. federal or US. state transportation authority, or (vi) that infringe or misappropriate the rights of a third party or are subject to an injunction or court order prohibiting the sale or shipment thereof (collectively, “**Prohibited Goods**”). If Client offers, sells, or ships Prohibited Goods, Client will reimburse Flow for any reasonable costs and expenses it or its affiliates incurs relating thereto, including any fines. Flow reserves the right in its sole discretion to suspend or terminate services and the Agreement if it believes in good faith Client has attempted to or has offered, sold, or shipped any Prohibited Goods. Notwithstanding the foregoing, certain goods considered Prohibited Goods may be sold or shipped in connection with the Agreement as and if mutually agreed and permitted under applicable laws and regulations. Client is solely responsible for requirements specific to quantity limits, packaging, hazmat labeling, documentation and/or detailing and must be able to

furnish material safety data sheets for such products upon reasonable request.

**1.12 Service and Returns.** Client will be responsible for authorizing the return of products from a customer in exchange for a full or partial refund, as determined by Client (a “**Return**”). Return credit amounts will be calculated at original currency exchange rate of the customer transaction, and will be net of costs for return shipping and handling and return duty, if applicable, unless Client elects to bear those costs when performing the Returns registration. Flow will provide return labels and documents for all permitted returns, which the customer will be instructed to print and attach to their Return parcel, and Flow will process customer refunds, unless otherwise agreed to by both Parties. Client’s authorization of a Return shall be deemed to include an offer to buy back the product which is the subject of the Return from Flow at the same price and in the same currency of Flow’s initial purchase and reimburse Flow for any taxes, duties, or similar transactional costs relating thereto. By processing the Return, Flow will be deemed to have accepted the buy back offer and shall direct the return delivery of the product in accordance with Client’s instructions. In the case that U.S. Customs requests information, documents and/or other evidence regarding any previous importation of any goods being returned and compliance with such ask is required for legal reasons or to avoid paying U.S. duties on Returns, the Parties will work in good faith, in a timely manner, to provide said evidence to said agencies. Upon request by Client, Flow will process credit requests to customers for an amount in an international currency, including but not limited to Returns and any amounts which Client elects to bear that would otherwise be due and payable by the customer (“**Courtesy Credit**”). Any refunded duties and taxes in relation to a Return which were paid at the time of purchase will be refunded to customers using the means of payment utilized for the initial collection of such duties and taxes. Client will be responsible for designating authorized personnel for the issuance of Courtesy Credits and their permission levels.

**1.13 Fees and Reimbursements.** Flow will invoice Client the amounts listed in the Client Subscription Order (“**Subscription Fees**”) or otherwise due to Flow under the Agreement. Flow will be reimbursed for any actual and reasonable costs Flow incurs as a result of Client’s instructions or approvals, including those related to (i) Courtesy Credits, (ii) Returns and Returns registrations and processing, including currency adjustments if outside of the currency rate lock window, (iii) re-shipments or processing undeliverables to a customer, (iv) actual costs incurred as a result of Client electing to override any value that would have otherwise been calculated in a Fully Landed Cost Quote, including shipping prices, and (v) if applicable, domestic sales taxes paid by Flow in connection with Flow purchases from Client (together, the “**Permitted Deductions**”). Twice a month, Flow will provide Client the amounts due from Flow to Client for products shipped and sold under Customer Orders in connection with the Agreement, less any Subscription Fees, Permitted Deductions or reimbursements, expenses, applicable taxes, duties, shipping and fulfillment related expenses. If the net amount Client owes Flow under this Agreement exceed such amounts due to Client in relation to Customer Orders, Client will pay Flow the amounts due hereunder pursuant to Flow’s invoice within thirty (30) days. Flow will maintain reasonable and appropriate records of amounts charged to and collected from customers under Customer Orders and settled or to be settled to Client in connection with the Agreement. Such records will be made available to Client in accordance with the Documentation solely for Client’s (or its auditors’) review and confirmation for up to one year. Client will promptly identify any known discrepancies and work with Flow to resolve such discrepancy. Flow may commingle funds collected and retain any interest or earnings relating thereto.

**1.14 Currency Conversions.** Flow will convert currencies for the purpose of pricing product and Customer Orders, collecting payment from Customers, and settling payment obligations with Client in the base currency identified on the Client Subscription Order. The then current Flow Core currencies (as set forth in the Documentation) will be converted at currency conversion rates of no greater than an average of 3.75% over in-country benchmarks. This rate includes all conversion fees and a currency rate lock of 5 business days. Other currencies will be converted at the prevailing rates as reasonably determined by Flow.

**1.15 Technical Errors.** In the unlikely event and to the extent there is a technical error in the Flow-Enabled Client Website or Solution (including with respect to currency conversions or other calculations) for which Flow is responsible, then such error may be treated as a manifest error and result in the cancellation or amendment of the applicable Customer Order if permitted under applicable laws and regulations, and the Parties will collaborate to address such error in a reasonable and equitable manner, without limiting Flow’s other responsibilities or obligations hereunder. Client will timely inform Flow of any known technical error which Flow becomes aware or that results in unusual transaction volumes. Client will not exploit (or allow others to exploit) known technical errors for its or its affiliates or any third party’s benefit.

## **2. Subscription Rights; Restrictions; Responsibilities; Confidentiality.**

**2.1 Subscription Rights.** Subject to the other provisions of the Agreement, including Sections 2.2-2.4, Flow will make available to Client for use on a non-exclusive and non-transferable basis during the Subscription Term the applicable portions or modules of the Flow Solution (which includes Flow provided or developed interfaces thereto and the Console) in accordance with the Documentation and the Agreement. From time to time in accordance with Flow’s generally applicable policies and

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procedures, Flow will make available and implement upgrades, enhancements, and error corrections when such upgrades, enhancements and error corrections are generally made available at no additional charge to its other clients. Flow will use commercially reasonable efforts to maintain the Solution to comply with the service levels identified in the Documentation, which includes a minimum 99.9% uptime.

**2.2 Restrictions.** Client will not (and will not permit any other party to) (a) make the Flow Solution available to any third party not authorized by Flow in writing, (b) resell, lease, distribute, transfer or otherwise make available the Flow Solution on a time-sharing or service bureau basis, (c) use the Flow Solution to violate or circumvent any laws or regulations or in a manner that disrupts the operations of Flow or any of its other clients, (d) use the Flow Solution to store or transmit malicious code or offer or distribute contraband or misleading, stolen, counterfeit, or infringing product, (e) decompile, disassemble, or reverse engineer the Flow Solution, in whole or in part; or (f) use or reference the Flow Solution to develop a competing service or product.

**2.3 Responsibilities.** As between the Parties, Client (not Flow) is solely responsible for (a) Client's website and order management system, including the hosting and processing of data relating thereto, (b) Product Information, including the accuracy thereof, (c) obtaining and documenting consumer and other consents required for Flow (and its third party contractors or processors) to perform its obligations and receive and process information and data as contemplated under the Agreement, (d) the products, including any loss, damage, injury, or death caused by the products, and product returns, repair, replacement, warranty obligations or recalls, (e) its business practices and use of the Solution as contemplated under the Agreement. Client will use commercially reasonable efforts to prevent fraudulent, unauthorized or illegal access to or use of, and loss or damage to, the Flow Solution to the extent within Client's control, and notify Flow promptly of any such event or circumstance. Client will also use the Flow Solution only in accordance with the Agreement, the Documentation and applicable laws and regulations for its business, and notify Flow promptly of any known or suspected use in violation thereof.

**2.4 Solution Ownership.** The Flow Solution, Documentation, and other Flow proprietary items provided to or accessed by Client under the Agreement (collectively, "**Proprietary Items**") are being made available on a strictly confidential and limited use basis in accordance with the Agreement and have great commercial value to Flow. The Agreement is not an agreement of sale, and no title, patent, copyright, trademark, trade secret, intellectual property or other ownership rights in or to any Proprietary Items are transferred to Client. Flow reserves all rights not expressly granted by the Agreement. All right, title, and interest in and to the Proprietary Items (including all related patent, copyright, trademark, trade secret, intellectual property and other ownership rights) are and will remain the sole and exclusive property of Flow. Any derivative works, modifications, or enhancements relating to the Proprietary Items (whether created alone by either Party or jointly by or on behalf of both Parties or their representatives) will be solely and exclusively owned by Flow. Client hereby assigns to Flow any rights, title and interest, including all intellectual property rights in any feedback, suggestions, ideas, derivative works, modifications, enhancements, or improvements related to the Proprietary Items that Client or any of its employees or representatives provide, propose, create, conceive, author or develop relating to the Agreement or their use of the Solution. Client will execute and deliver (or cause its employees and other representatives to execute and deliver) any additional documents deemed reasonably necessary or appropriate to perfect, maintain, protect, or enforce Flow's rights described above and the intent of this Section.

**2.5 Confidentiality.** All Confidential Information (defined below) of a Party ("**Disclosing Party**") in the possession of the other ("**Receiving Party**") shall be held in strict confidence, and the Receiving Party shall take all steps reasonably necessary to preserve the confidentiality of the Confidential Information. The Disclosing Party's Confidential Information shall not be used or disclosed by the Receiving Party for any purpose except (a) as necessary to exercise rights or perform obligations under the Agreement, or (b) as required by law, provided that the other Party is given a reasonable opportunity to obtain a protective order. The Receiving Party shall limit its use of and access to the Disclosing Party's Confidential Information to only those of its employees, representatives, agents, or contractors or processors whose responsibilities require such use or access. The Receiving Party shall require such employees, representatives, agents, affiliates, contractors or processors to abide by the terms of this Section or substantially similar requirements, as customary and applicable to the nature of such relationship. Either Party may disclose the Agreement to its actual or potential investors, creditors, professional advisors, or attorneys who are subject to a duty of confidentiality. "**Confidential Information**" means all confidential or proprietary information disclosed by one Party to the other in connection with the Agreement, unless it is or later becomes publicly available through no fault of the other Party or it was or later is rightfully developed or obtained by the other Party from independent sources free from any duty of confidentiality. Without limiting the generality of the foregoing, Confidential Information of Flow shall include Flow's Proprietary Items, this Agreement, and the pricing charged by Flow to Client.

## 3. Client Data

**3.1 Ownership and Rights.** As between the Parties, Client retains all of its right, title and interest in and to all of its data contained on its website and/or in the Solution, including Product Information ("**Client Data**"). Client hereby grants Flow a

royalty-free license to use, process and store Client Data to perform its obligations and exercise its rights relating to the Agreement and Customer Orders. This includes the right for Flow to engage affiliates and third parties, including fraud, payment, logistics, translation and data processors and telecommunication, networking, and cloud providers in the U.S. and internationally. Additionally, Flow may aggregate and anonymize any data or information relating to Client Data or the use of the Solution, including without limitation transactional and other analytics, to monitor, improve, or expand the Solution or Flow's commercial offerings notwithstanding anything to the contrary. As between the Parties, any such aggregated and anonymized data, information, or analytics provided, processed, or developed by Flow is owned by Flow. Aggregated and anonymized data, information, and analytics will not include personally identifiable data of a customer or reference Client.

**3.2 Safeguards.** Each Party will maintain reasonable and appropriate data safeguards and procedures designed to prevent the unauthorized use or disclosure of Client Data in its possession or control, including applicable Payment Card Industry data security standards ("**Data Safeguards**"). Each Party will use commercially reasonable efforts to notify the other Party of any known security breach, and/or data integrity compromise, promptly after learning of said breach or compromise which could impact the other Party. Client Data may be stored by Flow on media or hardware containing other client data both during and after the Subscription Term, provided such media and hardware are subject to the Data Safeguards. A Party may provide copies or access to Client Data as required by a court order or regulatory authority.

**3.3 Privacy Policies.** Customer related data provided to Flow will be subject to the Data Safeguards and Flow's then current privacy policies, currently available at [www.flow.io/policies/privacy](http://www.flow.io/policies/privacy) and may be processed or stored in the U.S. or other countries. Client will ensure that Customers will be made aware of and consent to Flow's privacy policies.

**3.4 Customer Personal Data.** In accordance with applicable laws and regulations, Client shall gather and collect customer data in relation to the Customer Orders and shall provide to Flow, all such data required for Flow to perform its responsibilities and exercise its rights under this Agreement. Certain customer data in certain geographies may be subject to local laws and regulations in such geography and the transfer of such data out of that country or to a third party may require consents from the applicable customer and/or additional requirements. Client will seek and obtain any required customer consents in connection with Flow-Enabled Client Website and Solution as instructed by Flow and/or required by laws and regulations. The Parties agree and acknowledge that this customer data may include information which qualifies as personal data under the EU Directive 95/46/EC as it may be amended from time to time (the "**Directive**") ("**EU Personal Data**"). For purposes of the EU Personal Data transferred to Flow under this Agreement, Flow shall be the Controller of the EU Personal Data as the term is defined in the Directive, and Client shall serve as an agent of Flow for the collection of the EU Personal Data. As and if required to comply with applicable laws and regulations:

- i. Client shall collect, store and transfer the EU Personal Data only for the limited and specified purposes described in this Agreement and only in accordance with Flow's instructions;
- ii. Client shall provide at least the same level of privacy protection for the EU Personal Data as is required by the EU-US Privacy Shield Framework Principles as issued by the US Department of Commerce as amended from time to time (available at <https://www.privacyshield.gov/EU-US-Framework>) (the "**Principles**"); and
- iii. Client shall notify Flow if it makes a determination that it can no longer meet its obligation to provide the same level of protection as is required by the Principles.

Nothing in this Section 3.4 shall limit a Client from acting as a Data Controller in its own right with regard to the same or additional information gathered from a customer in accordance with its own privacy policies.

**3.5 End of Subscription Term; Data Transfer.** Upon the termination or expiration of the Agreement and subject to payment of all amounts then due and owing, Flow will ensure Client Data remains available for Client to retrieve via the Flow Solution tools (e.g., API, exports) within sixty (60) days following any termination or expiration. Flow is not obligated to store any Merchant Data for more than sixty (60) days following the termination or expiration of the Subscription Term, but may do so for a mutually agreed storage fee.

## 4. TERM AND TERMINATION

**4.1 Subscription Term.** The "**Subscription Term**" means the duration of Client's right to receive, access, and use the Solution, as set forth on a Client Subscription Order (the "**Initial Subscription Term**") and any subsequent Renewal Subscription Terms. In the event that such duration is not specified on the applicable Client Subscription Order, the Initial Subscription Term will commence upon execution of the Client Subscription Order and will continue for twelve (12) months thereafter. The Subscription Term will automatically renew for a term that is equal to the Initial Subscription Term, unless one Party provides the other Party at least ninety (90) days written notice of its intent to not renew the Subscription Term (each a "**Renewal Subscription Term**"). Subscription fees in Client Subscription Orders will apply throughout the entire Subscription Term.

**4.2 Termination.** Either Party may terminate the Agreement (including the Client Subscription Order(s)) immediately on giving notice in writing to the other Party if the other Party: (a) commits a material breach and, in the case of a material breach capable of being cured, failed to cure that breach within thirty (30) days after the receipt of a request in writing to cure such breach; or (b) files for bankruptcy; (ii) becomes or is declared insolvent, or is the subject of any proceedings related to its liquidation, insolvency or the appointment of a receiver or similar officer for it; (iii) makes an assignment for the benefit of all or substantially all of its creditors; or (iv) enters into an agreement for the cancellation, extension, or readjustment of substantially all of its obligations. Client Subscription Order(s) between the Parties will be terminated if the Agreement is terminated or as otherwise provided in the applicable Client Subscription Order. The Agreement will be deemed terminated if there are no active Orders or all Subscription Terms have expired or terminated.

**4.3 Customer Orders.** If the Agreement is terminated or expired for any reason, Flow may continue processing in-process and existing Customer Orders at its discretion and the Agreement will survive with respect to such Customer Orders or terminate applicable Customer Orders.

**4.4 Effect of Termination or Expiration.** Following any termination or expiration, Flow will perform its data transfer obligations under Section 3.4 of the Agreement and Client will: (a) immediately discontinue all access and use of all Proprietary Items, (b) promptly return to Flow (or delete) any copies of the Proprietary Items then in Client's possession or control; (c) cease identifying Flow as its e-commerce provider, and (d) give written notice to Flow certifying the foregoing. Each Party will remain liable for all payments due to the other with respect to the period ending on the date of termination or expiration. For any termination other than a termination for good cause by Client in accordance with Section 4.2, the balance of all remaining subscription fees relating to the then current Subscription Term will be due and payable immediately plus any other amounts owed. The provisions of the Agreement that are required or intended to survive (including payment, indemnity, limitation of liability, intellectual property, confidentiality etc.) to give each Party the rights and benefits reasonably contemplated will survive any termination or expiration.

## **5. RISK ALLOCATION; WARRANTIES; INDEMNITY; AND REMEDIES**

**5.1 Representations and Warranties.** Each Party represents and warrants: (a) to the best of its knowledge, use of the Solution in the manner contemplated by the Agreement will not knowingly breach any agreement applicable to it, (b) it will comply with all applicable U.S. laws relating to its business and operations, and (c) it will not knowingly provide to the other Party any software, code or other such information that contain code or programming routines that contain destructive properties or that are intended to damage any system or data of the other Party. Client further represents and warrants that it has the right and authority to provide and grant Flow the right to use, process, and store Client Data and customer data in accordance with this Agreement. Client further represents and warrants that it has the right to sell and transfer title to the products identified in Customer Orders and the Product Information to Flow so that Flow may sell and transfer the same to customers. Client will honor and pass-through to Flow all warranties relating to its products so Flow may provide the same to customers in connection with Customer Orders. EXCEPT AS EXPRESSLY STATED OTHERWISE IN THE AGREEMENT, NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, OR NON-INFRINGEMENT.

**5.2 Indemnity.** Each Party ("Indemnifying Party") will indemnify, defend, and hold the other Party, its affiliates, and each of their respective officers, directors, agents, independent contractors, and employees (collectively, the 'Indemnified Parties') harmless from and against any and all claims, damages, losses, or expenses (including without limitation reasonable attorneys' fees incurred) arising out of any claim by a third party (including without limitation, customers or governmental authorities) relating to (a) the Indemnifying Party's breach of any of its representations, warranties, or obligations in the Agreement, (b) the Indemnifying Party's breach of privacy legislation related to its collection, transmission and use of personal data, unless arising from a breach of the Agreement by the Indemnified Party, (c) incorrect or incomplete customs data electronically submitted to government agencies or customs authorities regarding products being fulfilled in connection with the Agreement, if the customs data communicated by the Indemnifying Party was incorrect or incomplete through no fault of the Indemnified Party, (d) solely with respect to Client as the Indemnifying Party, the products and Product Information, including product liability or torts, product warranties, product recalls, mis-identified products in shipments, Unacceptable Goods, or other similar product liability matters, except to the extent solely arising from Flow's gross negligence or willful misconduct, (e) intellectual property rights that the Indemnifying Party provides or makes available hereunder to the Indemnified Party or any intellectual property used or performed hereunder by the Indemnifying Party (and not provided by the Indemnified Party), except that the Indemnifying Party will have no liability or obligation with respect to any such intellectual property claim if such intellectual property claim is caused in whole or in part by (x) modification of the items provided by the Indemnifying Party by any party other than Indemnifying Party without Indemnifying Party's express consent or (y) the combination, operation, or use of the

such items provided by the Indemnifying Party with other product(s), data or services where such items provided by the Indemnifying Party would not by itself be infringing. The Indemnified Parties must provide: (i) prompt written notice of such claim to the Indemnifying Party after becoming aware thereof; (ii) authority to the Indemnifying Party to control and direct the defense and/or settlement of such claim; and (iii) such information and assistance as reasonably requested by the Indemnifying Party in connection with such defense and/or settlement. In any claim for which the Indemnifying Party provides defense on behalf of the Indemnified Party, the Indemnifying Party may participate in such defense at its own expense by counsel of its choice. If the Indemnifying Party does not promptly assume its indemnification obligations, the Indemnified Party may assume such defense and recover all damages, costs and expenses relating thereto. A Party will be relieved of its indemnification obligations if the indemnified party's failure to comply with the foregoing materially prejudices it.

**5.3 LIMITATIONS OF LIABILITY.** EXCEPT FOR INDEMNIFICATION OBLIGATIONS OR THE UNAUTHORIZED USE OR DISCLOSURE OF PROPRIETARY ITEMS, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION ANY LOSS OF BUSINESS, REVENUE, PROFITS, SAVINGS, DATA OR WORK STOPPAGE) ARISING IN CONNECTION WITH THE AGREEMENT, AN ORDER, ANY CUSTOMER ORDER, THE SOLUTION, OR DOCUMENTATION BASED ON ANY THEORY OF CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR INFRINGEMENT CLAIMS RELATING TO THE SOLUTION SUBJECT TO INDEMNIFICATION BY FLOW, IN NO EVENT OR CIRCUMSTANCE WILL FLOW'S AGGREGATE LIABILITY FOR ANY LOSS, CLAIM OR DAMAGES RESULTING FROM THE AGREEMENT, ORDER(S), CUSTOMER ORDERS OR THE SOLUTION OR DOCUMENTATION EXCEED THE AMOUNT OF THE SUBSCRIPTION FEES COLLECTED BY FLOW DURING THE TWELVE (12) MONTHS PRECEDING THE LAST EVENT GIVING RISE TO LIABILITY. EACH PARTY SHALL TAKE ALL REASONABLE STEPS TO MITIGATE THE LOSS AND DAMAGE IT INCURS IN RELATION TO ANY CLAIM OR ACTION (WHETHER FOR NEGLIGENCE, BREACH OF CONTRACT, MISREPRESENTATION, UNDER ANY INDEMNITY OR OTHERWISE) WHICH IT BRINGS AGAINST THE OTHER. THE PARTIES AGREE THAT THE LIMITATIONS AND EXCLUSIONS SET OUT IN THIS SECTION ARE REASONABLE HAVING REGARD TO ALL THE RELEVANT CIRCUMSTANCES, AND THE LEVELS OF RISK ASSOCIATED WITH EACH PARTY'S OBLIGATIONS UNDER THE AGREEMENT.

## 6. MISCELLANEOUS

**6.1 Entire Agreement.** The Agreement sets forth the entire business understanding between Flow and Client with respect to the subject matter of the Agreement, and supersedes and replaces all previous discussions, negotiations, and agreements, whether oral or written.

**6.2 Nature of Relationship.** The relationship between Flow and Client will be strictly that of independent contractors and neither Flow nor Client will be, or be deemed to be agents, parties to a joint venture, or partners of one another.

**6.3 Delegation and Global Outsourcing.** Client acknowledges and agrees that Flow may perform certain activities and delegate or exercise certain rights or responsibilities, directly or indirectly, through its affiliates and/or third party contractors and processors. Flow will remain liable for performance under the Agreement notwithstanding the use of such affiliates and third parties and will be responsible for their acts and omissions relating to, and in accordance with, the Agreement.

**6.4 Waiver.** No waiver of any breach of any provision of the Agreement by either Party or the failure of either Party to insist on the exact performance of any provision of the Agreement will constitute a waiver of any prior, concurrent or subsequent breach of performance of the same or any other provisions hereof, and no waiver will be effective unless made in writing.

**6.5 Severability.** In the event that any provision of the Agreement conflicts with governing law or if any provision is held to be null, void, or otherwise ineffective or invalid by a court of competent jurisdiction, (a) such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law, and (b) the remaining terms, provisions, covenants, and restrictions of the Agreement will remain in full force and effect.

**6.6 Assignment.** The Agreement will bind, benefit and be enforceable by and against Flow and Client and, to the extent permitted hereby, their respective successors and assigns. Except as otherwise provided below, neither Party may assign any of its rights under the Agreement, and any attempt at such assignment will be void without the other Party's prior written consent, which consent will not be unreasonably withheld. Flow may assign the Agreement in connection with any merger, reorganization, acquisition or sale of all or substantially all of its asset or stock without Client's consent. If Client is subject to a merger, reorganization, acquisition or sale of all or substantially all of its asset or stock, Flow will consent to such assignment if (a) the proposed assignee's use of the Solution does not materially change the usage of the Solution prior to such assignment



or if such assignee agrees to pay a reasonable fee for any increased usage based on Flow's then current pricing, (b) Client is in compliance with the Agreement, and (c) such proposed assignee's credit rating is equal to or better than Client's.

**6.7 Emails and Electronic Signature.** The Agreement may be executed by exchanging emails that contain scanned copies of the Client Subscription Order and electronic signatures or approvals. For the sake of clarity, the Agreement will not be deemed executed until each Party has sent to the other Party a scanned copy of a Client Subscription Order containing its signature.

**6.8 Force Majeure.** Neither Flow nor Client will be liable, or deemed to be in default of the Agreement, for any delay or failure in performance or non-performance of any aspect of the Agreement (excluding payment obligations between the Parties) or any interruption, resulting directly or indirectly from acts of God, acts of public enemy, war whether declared or undeclared, terrorism, computer hacking incident or cyberattack, accidents, fires, electrical failures, equipment failures or unavailability, internet, telephone or carrier delays, explosions, earthquakes, the elements, strikes, lock-outs, labor disputes, governmental orders or regulations, shortages of parts, labor or transportation or any other cause beyond the reasonable control of Flow or Client (for their respective third party vendors essential to performance of the Agreement), as the case may be, so long as the Party failing to perform as a result of any such cause beyond its reasonable control, (a) notifies the other Party in writing as soon as it becomes aware of the fact and nature of the delay, and (b) establishes and implements a work-around plan for the delay which minimizes disruptions to the other Party resulting from the delay or failure to perform. Flow may exclude, prohibit, or suspend certain products, Customer Orders, or payments from being processed if Flow has a good faith concern, in its sole discretion, regarding the legality, magnitude, accuracy, safety, liability, or risks related thereto of any kind or nature, including product, consumer, geopolitical or macro-economic issues. Flow will use reasonable efforts to inform Client of any such event or circumstance and collaborate with Client to mitigate such risk or issue, if practical and within its control.

**6.9 Governing Law.** The laws of New York, excluding its conflicts-of-law rules, will govern the Agreement. The Parties hereby agree and consent to the exclusive jurisdiction and venue of the state and/or federal courts situated in the State of New York in any action arising out of or relating to the Agreement and hereby submit to the personal jurisdiction of such courts.

**6.10 Non-Solicitation.** Client will not directly or indirectly solicit for employment, offer to employ or contract with, or arrange the employment or other retention of any of Flow's employees or contractors who are directly involved under the Agreement during the Subscription Term and for twelve (12) months thereafter. This Section will not apply with respects to individuals that respond to general solicitations (e.g., advertisements or internet job postings) which were not directly targeting such resources.

**6.11 Use of Client's Name.** Each Party authorizes the other to use its name in any routine list of clients or vendors and as a reference.

**6.12 Further Assurance; Addendums.** Each Party, subsequent to the execution and delivery of the Agreement and without any additional consideration, will execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of the Agreement. Client further acknowledges and agrees that certain (i) updates or enhancements to the Solution's functions or features, (ii) Payment Options, (iii) Logistics Providers, (iv) International Geographies, including laws or regulations relating thereto, and/or (v) changes in laws or regulations may require supplemental terms and conditions specific thereto, and Client will approve and execute such supplemental terms and conditions as reasonably requested to continue using the Solution and having Flow process Customer Orders. If the Parties can not agree to such supplemental terms and conditions, Flow may disable, suspend or terminate access and use to applicable portions of the Solution (or the entire Solution if necessary) at its discretion and without liability to Client. If any such supplemental terms and conditions proposed by Flow would have a material adverse impact on Client and the Parties are unable to address such event or circumstances to their mutual satisfaction after 30 days of discussions, then Client may terminate this Agreement upon 30 days notice and without any further liability for subscription fees.

**6.13. Notices.** All notices, consents and other communications under or regarding the Agreement shall be in writing and shall be deemed to have been received on the earlier of the date of actual receipt or the first business day after being sent by a reputable overnight delivery service. Either Party may change its address for notices by giving written notice of the new address to the other Party.