

**GENERAL TERMS AND CONDITIONS  
FOR PROVISION OF PRODUCTS AND SERVICES**

These Terms and Conditions apply to all products or spare parts (collectively, "Products") sold or otherwise supplied by, and all services ("Services") performed by, FCX3 INC. and/or its affiliated companies ("FCX3") pursuant to a quote or purchase order or other order placement document submitted by a customer or its designee ("Customer") to FCX3.

**Order confirmation or acceptance by FCX3 as to any Product or Service shall constitute FCX3's offer to supply the same only in accordance with these Terms and Conditions. Customer's acceptance of FCX3's quotation, tender, or offer shall be subject to these Terms and Conditions and all applicable laws. Any purported acceptance of a FCX3 offer by Customer under terms that vary from, conflict with, or modify these Terms and Conditions shall not be effective or accepted by FCX3. Neither FCX3's commencement of performance nor FCX3's delivery of any Product shall be deemed to constitute acceptance by FCX3 of any term that varies from, conflicts with, or modifies these Terms and Conditions, regardless of whether such varying terms by Customer are set out in any acknowledgement, order, or other document of Customer.**

**Acceptance of any Product or Service by Customer shall constitute acceptance of, and is limited to, these Terms and Conditions. Notice of objection is hereby given to any term, provision, or condition of Customer that modifies or conflicts with these Terms and Conditions.**

**FCX3 recognizes that Customer may, for operating convenience, desire to utilize its own forms in connection with an order, and, in such case, any term, condition, or provision in such form that modifies, conflicts with, or is added to these Terms and Conditions shall be deemed waived by Customer unless accepted in writing by an officer of FLOCONX.**

**1. Price.**

(a) All prices are expressed in United States dollars, EXW, per ICC INCOTERMS 2010, and unless otherwise agreed in writing by FLOCONX, are subject to change without notice and are at FCX3's prices in effect at the time of Customer's order placement. Quotations will be given on request for any Product or Service offered by FCX3. Any quotation will remain in effect only for the period of validity specified therein or, if no such period is stated, for thirty days from the date the quotation is issued by FLOCONX.

(b) All quoted or listed prices are exclusive of costs of transportation and insurance and any applicable federal, state, or local use, sales, property, and other taxes, and license fees, import duties, and the like. No consular or other fees for legalizing invoices or stamping shipping documents, or other fees or documentation charges required by the laws of any country or destination, are included in quoted prices. Customer shall pay all such costs, taxes, fees, and duties, and where appropriate, shall report the same.

**2. Payment.**

(a) Payment for all Products purchased hereunder shall be net cash United States funds prior to shipment (except that certain Customers with an established credit account currently approved by FCX3 in writing may pay net cash within thirty days following invoice date). Upon written approval by FLOCONX, FCX3 may also accept payment by letter of credit on terms acceptable to FCX3 in its sole discretion. Partial shipments will be invoiced as made. All invoices are payable in Harris County, Texas. The Customer may be asked to pay fifty percent of the total purchase price for any order before any action is taken or work begun by FLOCONX.

(b) Interest from the invoice due date until payment, at thirty percent per annum (or such lesser amount as is the maximum legal rate), will be charged by FCX3 on invoiced amounts remaining unpaid sixty days after the due date. If unpaid amounts are collected through a collection agency, legal proceedings, or an attorney, Customer shall immediately pay or reimburse all reasonable collection fees, attorneys' fees, and court costs incurred by FCX3 in connection therewith.

(c) Payment terms for Services shall be agreed between FCX3 and the Customer in writing in advance of the delivery of such equipment or Services; provided, however, that in the event that such a written agreement shall not be in place for any reason, then FCX3 shall charge Customer for such Services at its standard commercial rates.

**3. Delivery Dates and Excusable Delays.** All shipment and/or delivery or completion dates for Products or Services are subject to FCX3's availability schedule, and to receipt of any advance payments required under Section 2(a). FCX3 will make commercially reasonable efforts to meet any delivery date(s) quoted; however, FCX3 will not be liable for its failure to meet any quoted date(s) or for any other delay in performance due to any unforeseen circumstances or any causes beyond FCX3's commercially reasonable control including, without limitation, strike or lockout; civil disturbance; international conflicts; fire; natural disaster; accident; failure or breakdown of parts necessary for completion; subcontractor, supplier, or Customer-caused delays; delay in obtaining any required export or other license; inability to timely obtain labor, materials, or manufacturing facilities or equipment; engineering issues affecting acceptable quality or performance standards; or compliance with any law, regulation, order, or decision of any governmental body or instrumentality thereof. Performance shall be deemed suspended for such time as any such circumstances or causes shall delay its execution. Whenever such circumstances or causes have been remedied, FCX3 will make and Customer shall accept

performance hereunder. No penalty clause of any kind from Customer shall be effective as against FCX3. As used herein, performance shall include, without limitation, fabrication, assembly, shipment, delivery, and warranty repair or replacement, as applicable.

**4. Packing.** All Products shall be packed, if appropriate, for shipping and storage in accordance with standard commercial practices, unless otherwise agreed by FCX3 in writing.

**5. Shipment.** Unless otherwise agreed by FCX3 in writing, all Products are priced and sold EXW per ICC INCOTERMS 2010. Notwithstanding transfer of risk and liability, title to the Product shall not pass to Customer until the Products are paid for in full. When, as an accommodation to Customer, FCX3 agrees to make shipment to Customer's nominated delivery point, FCX3 will ship in accordance with Customer's shipping instructions and Customer shall bear all charges and all risks arising in connection with such shipment. In the absence of shipping instructions from Customer, or if FCX3 considers Customer's shipping instructions unavailable or commercially unsuitable, FCX3 reserves the right to ship by any commercially reasonable method at Customer's cost. FCX3 shall not be liable for any short or incomplete shipments unless FCX3 receives from Customer written notice of any such shortage or missing Products within ten days of receipt of shipment by Customer.

**6. Changes, Cancellation, and Returns.**

(a) Unless otherwise agreed in writing, FCX3 reserves the right to change designs, materials, and specifications of its Products, and to discontinue any such Products, without any notice or liability to Customer.

(b) If Customer issues a change order or cancels an order, Customer shall be liable to pay to FCX3 the whole cost and loss incurred by FCX3 resulting from such change or cancellation, as such is reasonably determined by FLOCONX, which shall include all costs, direct and indirect, plus a pro rata proportion of normal profit.

(c) No credit shall be given for any Product returned by Customer unless in unique cases such product is returned with the prior written approval of an authorized representative of FCX3 issuing to the Customer a discretionary Return Goods Number. Only sales managers, major department managers, or officers of FCX3 are authorized to approve return of Products. Risk of loss or damage in respect of any Product returned with FCX3's authorization will remain with Customer until the Product is received by FCX3. Except for Products validly returned under warranty as set out in Section 11, a charge of up to fifty percent of the purchase price will be charged by FCX3 on all Products returned, in order to pay for costs of inspection, repacking, handling, and accounting for the Product. FCX3 shall not be responsible for holding or accounting for any Products returned without the required Return Goods Number. If freight and other transportation costs are not prepaid by Customer on any returned Product, the cost thereof will be deducted from any credit issued by FCX3. No credit will be given on any non-standard Product manufactured at the request of, or to the individual specifications of, Customer.

**7. Other Manufacturer's Equipment.**

(a) If any Products sold to Customer by FCX3 include units or materials obtained by FCX3 from any third party, **THESE UNITS OR MATERIALS ARE SOLD TO CUSTOMER AS IS.** FCX3 has no responsibility or liability whatsoever for such products, parts, or materials, other than to make reasonable efforts to transfer to Customer any warranties or other rights capable of transfer that FCX3 may have received in the products, parts, or materials from the third party.

(b) Connection or attachment of, or use by Customer of, any Product supplied by FCX3 with equipment obtained from a source other than FLOCONX, or incorporation of any Product into such equipment, voids FCX3's warranty under Section 11, unless FCX3 is advised of the type of equipment to be run with the FCX3 Products and has granted prior written approval of compatibility to Customer.

**8. Use and Acceptance of Product.** Customer represents and warrants, by acceptance or use of a Product, that Customer is familiar with the Product and its proper use and all safety and regulatory issues attendant thereto. Before using any Product, Customer shall give the Product reasonable and prudent examination and/or tests to determine the suitability of the Product for Customer's intended use. Customer shall be deemed to have accepted any Product upon Customer's use of the Product, or in any event, no later than fifteen calendar days after Customer's receipt of the Product unless, before that time, FCX3 has received from Customer written notice of any defect or nonconformity from Customer. **Customer acknowledges that certain FCX3 Products can, if misused or mishandled, or if used in an improper application, cause significant damage to persons or to property. Customer shall use the Products in strict accordance with all applicable regulations, with prudent industry practices, and with all specifications, instructions, and appropriate safety procedures. Any harm or loss caused by Customer's failure to use the Products properly and safely shall be the sole responsibility of Customer, and shall fall within the scope of Customer's indemnity of FCX3 as set out in Section 12 below. Except as may be specifically set forth in writing in a quote by FLOCONX, no representation is made by FCX3 that any Product is suitable for use in any potable water transportation system, gas distribution system, public utility facilities, or other particular use, and Customer is cautioned that, unless specific written representations are made by FCX3 in writing to the**

contrary, the Products may contain lead or other metals that may render the Products unfit for certain uses.

**9. Assistance to Customer.** At Customer's request, FCX3 may make FCX3 employees or contractors available to Customer to train Customer to operate Products supplied by FLOCONX, or to perform other actions as agreed in writing between Customer and FCX3. Rates for such training and/or Services by FCX3 employees or contractors shall be agreed to by the parties in writing. If FCX3 does make any FCX3 employee or contractor available to Customer, it is only on the condition that the employees shall be under the sole supervision of Customer, Customer shall supply all necessary equipment and supplies for the proper performance of the training or Services performed by the employees or contractors, and FCX3 shall have no liability whatsoever to Customer for the FCX3 employees or contractors during any time that they are under Customer's supervision. In addition, Customer shall be responsible and liable to FCX3 for any acts or occurrences or omissions causing harm to FCX3 employees or contractors while under Customer's supervision, and the indemnity of Section 12 below shall apply in such circumstances.

**10. Repair of Products.** Any repair to any Product supplied by FCX3 to Customer effected at Customer's request outside normal working hours (8:00 a.m. to 5:00 p.m., U.S. Central time zone, Monday through Friday) shall be charged by FCX3 at double the labor rate otherwise chargeable.

#### 11. Limited Warranty and Remedy.

**(a) Customer's Remedies are Limited to Repair and Replacement.** Customer's remedies for any and all breaches of any nature, including without limitation breaches of contract and warranty, are limited to the remedies of repair and replacement as specifically stated in these Terms and Conditions. The remedies provided herein are the exclusive remedies of Customer for failure of FCX3 to meet its obligations, whether claims of Customer are based on contract, in tort, or otherwise, and upon expiration of the applicable warranty period all obligations of FCX3 with respect to the Products will terminate.

**(b) Disclaimer of Warranties Not Expressly Stated.** THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS, OR IMPLIED. FCX3 EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

**(c) Limited Product Warranty; Exceptions.** FCX3 warrants each Product supplied by it to Customer (excluding any units or materials that are obtained from third parties and subject to Section 7 above) to be free from material defects in materials and workmanship if, and only if, all of the following conditions are met:

- (1) The Product claimed to be defective has been exposed only to normal storage, use, and service in accordance with specifications and instructions from FLOCONX, has been reasonably maintained, has not been subjected to any misuse, negligent use, or accident that caused the Product to suffer a defect, and has not been repaired or altered except by an authorized representative of FLOCONX;
- (2) The Product claimed to be defective has been dispatched at Customer's expense to FCX3's plant at Houston, Texas (or to such other location as FCX3 may designate), within ten business days after Customer first discovered the alleged defect;
- (3) The alleged defect in the Product is actually caused by a defect in materials or workmanship by FLOCONX; and
- (4) Neither the Product nor any relevant component thereof is one that is expendable in normal use and that has been expended in normal use
- (5) No Product subject to use in extreme or severe conditions (such as exposure to highly caustic or corrosive materials) shall be subject to warranty against the effects of such extreme or severe conditions, unless FCX3 explicitly agrees to provide such a warranty, in writing, in connection with the applicable purchase order acceptance.

The above warranty shall remain in effect until six months after shipment to Customer. Further, any Product that has had its serial number, temperature indicator, or other analytical component altered, defaced, or removed will not be warranted.

**(d) Limited Service Warranty.** FCX3 warrants that any Service provided hereunder shall be in conformance with the specifications set forth in the relevant scope of work document agreed to in writing by FCX3 and Customer. In the event that the Services do not so conform, then Customer's sole remedy shall be for FCX3 to re-perform that part of the non-conforming Services, provided that FCX3 is notified thereof by Customer prior to FCX3's departure from the work site.

**(e) No Warranty as to Specific Usage or Results; Specialty Products.** In developing, producing, testing, and/or supplying any such Product, FCX3 shall be relying upon information and specifications provided by Customer, and as such FCX3 shall bear no responsibility for any failure of such Product to meet the specific needs or intended uses of the Customer. Rather, FCX3's sole warranty with respect to any such Specialty Product shall be limited to warranting that the Product meets the specifications agreed in advance by FCX3. In the event that FCX3 supplies to Customer any Product based upon Customer's request that FCX3 develop, produce, test, or put to use any non-standard FCX3 Product (a "Specialty Product") so as to satisfy a unique need of Customer, Customer acknowledges and agrees that any such Specialty Products may not have or contain the same or similar characteristics as FCX3's standard Products and may not have a historical performance against which such Specialty Product can be measured.

**(f) Limited Remedies Available Under Warranty.** Except as otherwise provided above, FCX3's liability under the above-described limited warranty shall be limited to the repair or replacement of the Products sold hereunder. FCX3 will repair or replace the Product at no cost to Customer, but the decision as to whether to repair or replace will be solely that of FCX3. Repairs or replacement Products are only warranted for the remaining unexpired portion of the applicable warranty period. **The Customer acknowledges and agrees that the remedies set forth in this Section 11 shall be the Customer's sole and exclusive remedy against FLOCONX, and that FCX3 shall have no liability or responsibility whatsoever to Customer for any claim or losses of any nature, except as set forth in this Section. The Customer shall not be able to avoid the limitations expressly set forth in this Agreement by electing to pursue some other remedy, whether in tort or otherwise.**

**(g) Notice of Claims Required.** All claims under the warranty set out herein must be made promptly after the alleged defect occurs or comes to light and must be received by FCX3 within the warranty period. The claim must include the Product's description, part number, serial number (if any), date of shipment or delivery, and a full description of the circumstances giving rise to the claim. Any Product returned under claim of defect shall be sent prepaid by appropriate transportation. Customer is responsible for all damage or loss resulting from improper packing or handling, and for any loss or damage occurring during the transmission of the Product to FCX3. If any Product is returned and is found not to be defective, FCX3 will notify Customer and, at Customer's option, will return the Product to Customer at Customer's expense, and Customer shall reimburse FCX3 for all costs incurred in testing and examining the Product.

#### 12. INDEMNITY, DEFENSE, AND RELEASE BY CUSTOMER.

EXCEPT TO THE EXTENT CAUSED *SOLELY* BY FCX3'S OWN NEGLIGENCE OR MALFEASANCE, CUSTOMER HEREBY AGREES TO AND DOES RELEASE, UNCONDITIONALLY INDEMNIFY, DEFEND, AND HOLD HARMLESS FLOCONX, ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, CONTRACTORS, INVITEES, AFFILIATES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, "FCX3 INDEMNIFIED PARTIES"), AGAINST ALL LIABILITY, EXPENSES, CLAIMS (INCLUDING INJUNCTIONS, SUBPOENAS, AND OTHER COURT ORDERS, AND ALL LEGAL INQUIRIES AND INVESTIGATIONS OF ANY SORT), DAMAGES, LOSSES (INCLUDING LIABILITY TO ANY THIRD PARTY IN RESPECT OF PROPERTY LOSS OR DAMAGE OR INJURY OR DEATH OF PERSONNEL), JUDGMENTS, AND AWARDS (COLLECTIVELY, "LOSSES") THAT ANY FCX3 INDEMNIFIED PARTY MAY AT ANY TIME SUFFER OR SUSTAIN AS A DIRECT OR INDIRECT RESULT OF THE CUSTOMER'S PURCHASE, USE, OR RESALE OF ANY PRODUCT OR SERVICES SUPPLIED BY FCX3 HEREUNDER (EXCEPT FOR COSTS ASSOCIATED WITH THE LIMITED WARRANTY PROVIDED BY FCX3 PURSUANT TO SECTION 11 HEREOF), EVEN IF SUCH LOSS IS CAUSED BY STRICT LIABILITY OR THE JOINT, COMPARATIVE, OR CONCURRENT NEGLIGENCE OF FCX3 OR ANY FCX3 INDEMNIFIED PARTY.

**IN NO EVENT SHALL FCX3 OR ANY FCX3 INDEMNIFIED PARTY BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR ANY PUNITIVE DAMAGES OR FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, ANY LOSS OF GOODWILL, LOSS OF USE, LOSS OF PROFITS, OR LOSS OF PRODUCTION. FURTHER, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE LIABILITY OF FCX3 OR ANY FCX3 INDEMNIFIED PARTY TO CUSTOMER FOR ANY LOSS WHATSOEVER IN CONNECTION WITH ANY PRODUCT OR SERVICE, HOWEVER CAUSED, SHALL IN NO EVENT EXCEED THE PAYMENT, IF ANY, RECEIVED BY FCX3 FOR THE RELEVANT PRODUCT OR SERVICE PROVIDED BY FCX3 TO THE CUSTOMER HEREUNDER. MOREOVER, CUSTOMER AGREES TO AND DOES HEREBY RELEASE, INDEMNIFY, AND HOLD FCX3 OR ANY FCX3 INDEMNIFIED PARTY HARMLESS FROM AND AGAINST ANY LOSS IN EXCESS OF SUCH PAYMENT RECEIVED BY FCX3. CUSTOMER FURTHER AGREES TO PROVIDE SUFFICIENT INSURANCE (OR SHALL SELF-INSURE) FOR THE BENEFIT OF EACH OF THE PARTIES HERETO AS SHALL BE NECESSARY TO PROTECT CUSTOMER, FLOCONX, AND ANY FCX3 INDEMNIFIED PARTY FROM ANY SUCH LOSS AS ALLOCATED PURSUANT TO THE PROVISIONS HEREOF.** Upon written request, each party shall furnish to the other party certificates of insurance evidencing the fact that adequate insurance to support each party's obligations hereunder has been secured.

#### 13. Compliance with United States Law.

**(a)** In the case of an order for any Product for delivery to an ultimate destination outside the United States, Customer, acknowledges, agrees and accepts that:

- (1) Customer shall at the time of order, without request from FLOCONX, give notice in writing to FLOCONX, stating the country of ultimate destination ("Ultimate Destination Country") of the Product and the name and address of the end user in the Ultimate Destination Country; and
- (2) Customer shall comply with all applicable U.S. regulations and with all terms and conditions of all required export and other licenses (including license exceptions) ("Licenses") including, without limitation, regarding export, re-export, and transshipment; and
- (3) FCX3 is authorized to disclose to any lawful governmental authority with jurisdiction over the transaction subject hereto the details of any Product to be supplied by FCX3 to Customer; and
- (4) Customer shall not re-export any Product from the Ultimate Destination Country without the prior written consent of FLOCONX; and
- (5) Customer shall, at FCX3's request, provide representations and undertakings in writing in such form as FCX3 may require relating to the

Ultimate Destination and end user of all Products and confirming acceptance and observance of all the provisions of this Section.

Acceptance of any order for any Product to which this Section applies, and any contract or agreement relating thereto, shall be subject to and be deemed to include the condition that it is conditional upon all required Licenses being granted. Notwithstanding the terms of the preceding sentence, in the event of any such License: (1) being denied, Customer shall be deemed to have cancelled the order; or (2) being issued in terms not acceptable to Customer and Customer canceling the order, Section 6(b) hereof shall apply.

(b) Notwithstanding any other provision contained in these Terms and Conditions, FCX3 reserves the right, in respect of any order for any Product ordered for delivery to an ultimate destination in the U.S., to require Customer to make a declaration in such form as FCX3 may require representing that the ultimate destination of the Product is within the U.S.; and in the event that Customer refuses or unreasonably delays in making such declaration in a timely manner, FCX3 reserves the right to treat Customer as having cancelled such order, in which event Section 6(b) hereof shall apply.

(c) Customer represents that, to the best of its knowledge, no illegal inducement was offered or given by any party in connection with the sale of Products or Services hereunder, and that no illegal inducements shall be paid by Customer (or by any third party on Customer's behalf) in connection with any resale of the Product by Customer, or in connection with the sale by Customer of any services in connection with which the Product or Services are used. Any breach by Customer of the representations set forth in this Section 13(d) shall entitle FCX3 to release, defense, and indemnification under Section 12 hereof.

(d) Notwithstanding any other trade terms or conditions agreed with FCX3 in any communication with Customer, under no circumstances shall FCX3 accept any conditions, terms of trade, course of dealing, or business arrangement that could constitute participation in or acceptance of any trade boycott of a third country, except such embargoes as are mandated by applicable US law.

**14. Intellectual Property Rights of FLOCONX; Software.** Under no circumstances shall the sale of any Product hereunder transfer ownership of any intellectual property rights from FCX3 to Customer, regardless of whether FCX3 has designed, configured, engineered, or manufactured any Product or delivered any Service specifically to Customer's specifications. Customer expressly acknowledges that any design, engineering, technical work, or other intellectual property of any kind developed by FCX3 in connection with meeting any order from Customer or supplying any Product or Service to Customer shall constitute FCX3's proprietary data and shall be solely FCX3's intellectual property, and Customer shall have no ownership or license rights with respect to any such intellectual property except as may be agreed by FCX3 in writing. In connection with any software provided in conjunction with a Product, FCX3 represents that it has secured all rights, licenses, and authorizations necessary for Customer to use the Product, including any software provided with the Product, consistent with the terms and conditions under which such Product was sold. FCX3 shall maintain all rights, licenses, and authorizations necessary for Customer to use all Products, including any software, consistent with the terms of sale. FCX3 hereby grants to Customer a non-exclusive, non-perpetual, non-assignable license to all FLOCONX-owned software and other intellectual property required by Customer to use the Products sold hereunder in a manner consistent with the Product's terms of sale. In addition, FCX3 hereby grants to Customer a non-exclusive, non-perpetual sublicense to all freely assignable third-party software provided with the Product, and assigns or otherwise transfers to Customer any freely assignable warranties, service agreements, patent or copyright protections, or other intellectual property rights conveyed by the original supplier of such software to FLOCONX.

**15. Confidentiality.** All data, designs, drawings, specifications, and other information, revealed or disclosed in any form or manner to Customer by FLOCONX, including but not limited to any detail or feature of any Product or part thereof, whether written, oral, electronic, visual, graphic, photographic, observational, or otherwise, and documents supplied to, or produced or created by, FCX3 in connection with the provision of Products or Services to Customer hereunder (collectively defined as "Information") will be held in strict confidence by Customer; provided, however, that this confidentiality obligation shall not apply to any data given freely by FCX3 to prospective customers (for example, in product brochures or on FCX3's website). All such non-public Information will be treated and protected by Customer as strictly confidential and will not be disclosed to any third party without the prior written consent of FCX3 and may be disclosed within Customer's organization only on a need-to-know basis. The foregoing obligations shall not apply to any information that (i) is publicly known or becomes publicly known through no fault of or disclosure by Customer; (ii) is given to Customer by someone other than FCX3 as a matter of right and without restriction of disclosure; (iii) was known to the Customer prior to the acceptance of these Terms and Conditions; or, (iv) is legally compelled to be disclosed. If Customer receives a subpoena, governmental order, or other legal process seeking disclosure of FCX3's Information, Customer shall immediately notify FCX3 in order to allow FCX3 the opportunity to oppose the order, notice, or process, or seek a protective order. If requested by FLOCONX, Customer shall cooperate fully with FCX3 in contesting such disclosure. Except as such demand shall have been timely limited, quashed or extended, Customer may thereafter comply with such demand, but only to the extent required by law.

**16. General.** Unless and to the extent altered or amended by an instrument in writing signed by FCX3 and Customer, (i) these Terms and Conditions constitute the entire agreement of FCX3 and Customer with respect to the Product or Service, and contain all of the covenants and agreements of FCX3 and Customer with respect thereto; (ii) Customer acknowledges and represents that no representations, promises, or

*FCX3 LLC: Updated as of January 2019*

agreements, oral or written, have been made by FCX3 or anyone acting on behalf of FLOCONX, that are not contained herein; and (iii) any prior agreements, promises, negotiations, or representations not expressly set forth in these Terms and Conditions are of no force or effect. These Terms and Conditions may not be altered or amended except by an instrument in writing signed by FCX3 and Customer. Failure by FCX3 to enforce any or all of these Terms and Conditions in any case or cases shall not constitute a waiver of or preclude subsequent enforcement of any or all of such Terms and Conditions. Any attempted or purported assignment or transfer by Customer of any of the rights or obligations contained herein shall render such attempted or purported assignment or transfer null and void. FCX3 may perform and fulfill all or any of its obligations hereunder by or through any subsidiary or affiliate.

**17. Arbitration.** ANY DISPUTE, CONTROVERSY, OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH, TERMINATION OR INVALIDITY THEREOF, SHALL BE FINALLY SETTLED BY ARBITRATION ADMINISTERED BY THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION IN ACCORDANCE WITH ITS INTERNATIONAL ARBITRATION RULES. The place of arbitration shall be Houston, Texas. The language to be used in the arbitral proceedings shall be English. Provisional or interim measures shall be awarded by the tribunal as appropriate to protect FCX3's rights to its intellectual property. The proceedings of the arbitration shall be treated as confidential information hereunder. The tribunal shall award costs to the party with the more meritorious claim or defense, as the case may be, unless it deems it manifestly unjust to do so. Any award rendered by the tribunal shall be binding and enforceable immediately when rendered, and judgment upon the award may be rendered by any court with jurisdiction over the party against whom enforcement is sought, wherever located. Notwithstanding the foregoing, FCX3 may apply to any relevant government agency or any court of competent jurisdiction to preserve and recover its intellectual property in accordance with the terms hereof, provided, however, that no such administrative or judicial authority shall have the right or power to stay any arbitral proceeding hereunder, or to render a judgment for damages due hereunder, which right and power shall be reserved exclusively to an arbitral tribunal proceeding in accordance herewith. The Customer hereby waives any objection on procedural or fairness grounds to the issuance of such preliminary relief, without, however, waiving or prejudicing in any way the Customer's right to raise any claim or defense it may have as to the merits.

**18. Limited Statute of Limitations.** AS PERMITTED BY THE TEXAS BUSINESS AND COMMERCE CODE, §2.725(a), THE STATUTE OF LIMITATIONS FOR ANY BREACH OF CONTRACT RELATIVE TO THE SALE OR OF ANY PRODUCT OR THE DELIVERY OF ANY SERVICES HEREUNDER SHALL BE ONE YEAR FROM THE DATE THE CAUSE OF ACTION ACCRUES.

**19. No Authority of Seller's Representatives or Agents.** No representative or agent of FCX3 has any authority to bind FCX3 to any affirmation, representation, or warranty concerning the Products except as may be stated herein, nor shall any agent of representative have any authority to alter any term thereof except as may be approved in writing by the President of FLOCONX.

**20. Choice of Law.** Any agreement or transaction to which these Terms and Conditions apply shall be deemed to have been made in the State of Texas. These Terms and Conditions shall be governed by and construed, interpreted, and enforced in accordance with the laws of the State of Texas. The UN Convention on Contracts for the International Sale of Goods shall not apply.

**21. Language.** These Terms and Conditions are agreed only in the English language, which version shall be controlling regardless of whether any translations of these Terms and Conditions, and/or any other communications, have been prepared or exchanged between the parties. Customer acknowledges and represents that the Customer is fluent in the English language, and has carefully reviewed this Agreement with the involvement and assistance of its employees, advisors, and/or legal counsel fluent in the English language, that Customer has consulted with legal counsel competent to render advice with respect to transactions governed by the law applicable hereto, that Customer has no questions regarding the meaning of any of any terms hereof, and that Customer has obtained high-quality translations of these Terms and Conditions for use by any of its team who are not fluent in the English language, with the understanding that the Customer alone shall bear the risk of any misunderstandings that may arise as a result of such translation.