

# Subscription Agreement Flamconnect Remote

## The undersigned:

1. The private company with limited liability **Flamco B.V.**, with offices at Fort Blauwkapel 1, (1358 DB) Almere, represented herein by [...] (hereinafter "**Flamco**")  
and
2. [...], with offices at [...], represented herein by [...] (hereinafter "**Customer**")

## Whereas:

- (A) Flamco has developed Flamconnect Remote that allows users of its connectable products to monitor these products remotely.
- (B) Customer would like to make use of Flamconnect Remote to monitor its connectable products.
- (C) Flamco is prepared to give Customer a subscription to Remote.
- (D) Parties wish to lay down the applicable terms and conditions in this Agreement.

## Now therefore the parties have agreed as follows:

### 1. Definitions and interpretation

1.1 The following terms have the meaning set out below:

- (a) **Administrator Account:** the account made available by Flamco to Customer to administer its Subscription.
- (b) **Agreement:** the agreement as laid down in the current document and Annexes.
- (c) **Annex:** an annex to the current document which forms an integral part of this document.
- (d) **Commencement Date:** Date we provide in our user and password.
- (e) **Flamconnect Gateway:** a modem against an additional fee made available by Flamco to Customer.
- (f) **Flamconnect Remote Portal:** the portal for use of Flamconnect Remote.
- (g) **Portal Terms of Use:** the terms and conditions governing the use of the Flamconnect Remote Portal as updated from time to time. The current version is available on Annex: <https://flamcogroup.com/ex-en/pageid/landingpage-flamconnect-remote-service>
- (h) **Product:** one or more products of Customer with the ability to connect specified on Annex: [...](#)

<https://flamcogroup.com/ex-en/pageid/landingpage-flamconnect-remote-service>.

- (i) **Flamconnect Remote:** Flamconnect Remote provided by Flamco as per the agreed subscription type.
- (j) **Subscription:** the subscription that gives Customer the right to use Flamconnect Remote as per the select subscription type. The applicable subscription type is detailed in Annex: <https://flamcogroup.com/ex-en/pageid/landingpage-flamconnect-remote-service>.
- (k) **User:** any user of Flamconnect Remote using a subaccount created with the Administrator Account.

1.2 In the event of a conflict or inconsistency between this document and any Annex, the terms of this Agreement shall prevail unless the Annex deviates from the Agreement explicitly.

## 2. **Set-up of Flamconnect Remote**

2.1 Flamco will activate the Subscription, against a fee make the Flamconnect Gateway available to Customer and will provide Customer with log-in data for its Administrator Account.

2.2 Customer is responsible for installing and using the Flamconnect Gateway in accordance with the installation guidelines which accompany the gateway. Customer is responsible for connecting the Product(s) to the Flamconnect Gateway.

2.3 After installation of the Flamconnect Gateway and connection with the Product(s), Customer can set-up Flamconnect Remote, using the Administrator Account.

2.4 Customer is responsible for obtaining all consents required to install the Flamconnect Gateway and to connect the Product(s), such as possible required consents from the owner and residents of the building.

2.5 The Flamconnect Gateway is sold to the customer and becomes his property.

## 3. **Use of Flamconnect Remote**

3.1 Customer may maximally create 25 Users.

3.2 The use of Flamconnect Remote is subject to the Portal Terms of Use. Each User have to accept these terms and conditions before he has access to Flamconnect Remote.

3.3 Customer is responsible for all use made of Flamconnect Remote via the Administrator Account and by the Users.

3.4 You may use Flamconnect Remote for your own business purposes only and may not give third parties access to Flamconnect Remote.

- 3.5 If Customer suspects misuse of an account or becomes aware of the fact that log-in data have not been kept secure or confidential, it will inform Flamco immediately and Flamco may disable the account and issue new log-in data.
- 3.6 Based upon reasonable grounds, including but not limited to (suspected) misuse or fraud, Flamco may (i) adapt or limit the functionality of the Flamconnect Remote Portal and/or Flamconnect Remote, (ii) block access to the Flamconnect Remote Portal and/or the Flamconnect Remote, (iii) block a certain account or (iv) terminate the Agreement.
- 3.7 Customer shall not introduce a computer virus, Trojan horse, worm or similar malicious software code in the Flamconnect Remote Portal or Flamconnect Remote.
- 3.8 Except for unavailability due to maintenance, Flamco undertakes commercially reasonable efforts to maximize uptime of the Flamconnect Remote Portal and Flamconnect Remote.
- 3.9 Flamco always may change the Flamconnect Remote Portal and Flamconnect Remote (such as adding, amending or deleting functionalities, amending look and feel), provided Customer remains able to use Flamconnect Remote. Flamco may amend the Portal Terms of Use from time to time. If such amendment has material adverse effect for Customer, Customer may terminate the Subscription by giving written notice to Flamco within 8 working days after being informed by Flamco of such amendment.

#### 4. **Use of data**

- 4.1 Depending on the type of subscription, Flamconnect Remote enable Customer to retrieve certain types of data from the Products, such as information on use and performance. Customer is responsible for the processing of these data and for complying to all legal requirements, especially under data protection law. Inter alia this means that Customer is obliged to comply with any information and consent obligations and to respect data subject rights.
- 4.2 After installation of the Flamconnect Gateway Flamco will receive all data that the Products transmit to the Flamconnect Remote Portal, irrespective the type of subscription of Customer. Flamco collects and uses these data on its own behalf for the following purposes:
- (a) performance of the Agreement;
  - (b) product development;
  - (c) product support;
  - (d) assessment of warranty and other claims in relation to the Product;
  - (e) marketing (including but not limited to making upsell and cross sell offers).

Customer irrevocably consents to these uses. Flamco is responsible for the processing of these data and for complying to all applicable legal requirements, especially under data protection law. Inter alia this

means that Flamco is obliged to comply with any information and consent obligations and to respect data subject rights. At first reasonable request of Flamco, Customer will assist Flamco to comply to any notification obligation, for instance by distributing privacy notices from Flamco within the buildings where the Products are located.

4.3 The parties are aware that processing of certain data may be subject to data subject's consent and/or should be stopped at request of a data subject. The mere fact that certain data may no longer be processed is not deemed to be a breach by Flamco of this Agreement and does not entitle either party to terminate the Agreement and/or to claim damages.

## 5. **Service Desk**

5.1 In case Flamconnect Remote does not work properly or in case Customer has questions relating to Flamconnect Remote, Customer may contact Flamco's service desk.

5.2 The service desk may only be contacted by Customer's administrator or employees with similar knowledge and experience.

5.3 The service desk will be available during weekdays, excluding public holidays in the Netherlands, from [08.00-17.00] hours CET.

## 6. **Fees**

6.1 Customer shall pay Flamco the monthly Subscription fee set out in **Annex** <https://flamcogroup.com/ex-en/pageid/landingpage-flamconnect-remote-service>

6.2 During the term of this Agreement, Flamco will invoice the Subscription fees in advance, on a monthly basis. These invoices must be paid within 30 days after date of invoice.

6.3 The Subscription fee will be fixed for the period of 1 (one) year. After aforementioned 1 year period, Flamco may amend the monthly Subscription fee at any time by giving written notice to Customer, at least 2 (two) months before the effective date of the change. An amendment of the Subscription fee entitles the Customer to terminate the Agreement in accordance with article 3.9.

6.4 Early termination of a Subscription does not entitle Customer to any refund from Flamco whatsoever. In deviation of the foregoing Customer is entitled to a pro rata repayment of paid fees if it terminates the Agreement pursuant to article 3.10.

6.5 Flamco has the right to block the access of a customer to Flamconnect Remote in case the Customer fails to pay the applicable fee in time.

## 7. **Warranties**

7.1 Except as to any express warranty contained herein, the Flamconnect Gateway, the Flamconnect Remote Portal and Flamconnect Remote are provided "as is" and Flamco makes no conditions, warranties or representations of any kind with regard to the Flamconnect Gateway, the Flamconnect

Remote Portal and Flamconnect Remote, including without limitation, any implied warranties of satisfactory quality, uptime, merchantability, fitness for a particular purpose, title and non-infringement, all of which are, to the extent permissible by law, hereby expressly excluded. Flamco does not warrant that the results of use or that the Flamconnect Gateway, Flamconnect Remote Portal and Flamconnect Remote are bug free or that their use will be uninterrupted.

- 7.2 Flamco will use commercially reasonable efforts to secure Flamconnect Remote and its contents from unauthorized access and alteration, but cannot guarantee that no unauthorized access or alteration will take place.
- 7.3 The Customer will use Flamconnect Remote for its own account and risk. Flamco does not warrant that the information gathered through Flamconnect Remote is correct and may be relied upon.

## 8. **Limitations of liability**

- 8.1 Flamco shall not be liable to Customer or be deemed to be in breach of this Agreement due to any cause beyond Flamco's reasonable control.
- 8.2 To the fullest extent permitted by law, Flamco's total liability whatsoever, in contract, tort (including negligence or breach of statutory duty), or howsoever otherwise arising in connection with direct damage in the performance or contemplated performance of this Agreement for each respective breach or series of related breaches or any and all losses, shall not exceed in the aggregate [twice] the Subscription fee paid by Customer to Flamco for the year in which the event giving rise to liability took place or to [EUR 50,000 (fifty thousand)], whichever amount is lower.
- 8.3 In no event shall Flamco be liable to Customer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, loss of opportunity, missed savings, depletion of goodwill, recall, dismantling or otherwise), costs, expenses or other claims for consequential compensation.
- 8.4 The limitations and exclusions referred to in this clause will not apply in the event of:
- (a) intent or willful recklessness of Flamco, its subordinates or assistants; or
  - (b) damage resulting from death or injury.
- 8.5 Customer will indemnify Flamco for all costs and damages in relation to Customer breaching articles 2.4 or 3.3.

## 9. **Proprietary rights**

All rights of intellectual property with respect to Flamconnect Remote and the Flamconnect Remote Portal, including but not limited to the copyrights, trademark rights and database rights, are vested in Flamco and/or its licensors.

## 10. **Data Protection**

In the event that the data processed by Flamco on the Customer's behalf on the terms proposed by Flamco qualifies as personal data, the parties will enter into a separate data processing agreement.

## 11. **Confidentiality**

11.1 Notwithstanding article 4, the parties reciprocally undertake to treat all information and data of which the parties take note in the performance of this Agreement as confidential. The parties undertake not to disclose such information and data to third parties without written consent from the other party, other than necessary in the performance of this Agreement. The duty of confidentiality applies for the term of this Agreement and a period of 3 years thereafter.

11.2 The parties will require their subordinates who are charged with the performance of this Agreement to comply with a comparable confidentiality obligation.

11.3 The confidentiality obligation as laid down in this clause does not apply to information and data:

- (a) that are public and/or known without the disclosure being the result of an unauthorized act by the disclosing party; or
- (b) regarding which disclosure is required on the basis of any statutory provision or regulation, a request from a regulator, or within the context of legal proceedings, all subject, if reasonably possible, to the prior written notification to the other party and to consultation in good faith regarding the contents of the disclosure.

11.4 At the discretion of the party from whom the information originates, in the event this Agreement is terminated the other party must destroy the information it received from the other party during the performance of this Agreement, including copies made by the receiving party and digital or other documents produced on the basis of this information, or return such to the other party, without prejudice to the parties' right to retain information in so far as necessary in compliance with a statutory obligation or a regulation.

## 12. **Term and termination**

12.1 This Agreement enters into force on the Commencement Date and is concluded for [1 (one)] year. After this period, the Agreement will be automatically and continuously extended for periods of [1 (one)] year, unless the Agreement is terminated in writing by one of the parties towards the end of the term with due observance of a notification period of at least 3 (three) months.

12.2 Notwithstanding any other provisions of this Agreement, each of the parties is entitled to terminate (*ontbinden*) this Agreement by means of registered letter, in part or in full, if:

- (a) the other party is in default, unless the failure, in view of its special nature or minor significance, does not justify such termination and its consequences;

- (b) the other party applies for or is granted suspension of payments;
  - (c) the other party files for bankruptcy or is declared bankrupt;
  - (d) the business of the other party is wound up; or
  - (e) the other party terminates its present business.
- 12.3 For the purpose of clause 12.2(a), default is understood to be a situation in which:
- (a) a term explicitly agreed as deadline for performance has lapsed without performance; or
  - (b) proper performance is permanently or temporarily impossible; or
  - (c) the fact that performance will not be forthcoming can be derived from notifications or behavior of the other party; or
  - (d) even after a reasonable term of no more than 30 days given in a notification of default, the other party fails to comply with any provision of the Agreement.
13. **Consequences of termination**
- 13.1 At termination of the Agreement (1) Flamco will block Customer's access to the Flamconnect Remote Portal and/or Flamconnect Remote, (2) the Subscription stops immediately and (3) Customer may no longer use Flamconnect Remote.
14. **General provisions**
- 14.1 This Agreement takes the place of all earlier agreements between the parties with the same subject, including verbal and implicit agreements.
- 14.2 Except for the Portal Terms of Use, no general terms and conditions of either party shall be applicable to this Agreement. The signing or (tacit) acceptance of any documents to which such conditions have been declared applicable, shall not be deemed to imply acceptance thereof.
- 14.3 The invalidity of any provision of this Agreement does not prejudice the other provisions of this Agreement. If a provision proves to be invalid, the parties will strive to replace it by a provision that is not invalid and that is in accordance with the invalid provision to the extent possible.
- 14.4 Customer shall not be entitled to assign the Agreement or any part thereof without Flamco's prior written approval. Flamco may assign the Agreement or any part thereof to its affiliates.



15. **Applicable law and competent court**

15.1 This Agreement and agreements ensuing from it are governed exclusively by the laws of the Netherlands.

15.2 Disputes will be exclusively brought before the competent court in Utrecht.

**Thus agreed in duplicate:**

**Flamco B.V.**

[...]

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By:  
Place:  
Date:

\_\_\_\_\_  
By:  
Place:  
Date: