

# SALE TERMS AND CONDITIONS

1. **ACCEPTANCE AND CANCELLATION OF ORDERS.**

Any contract for the sale of goods made between Buyer and Seller may be cancelled by Buyer only upon the advance written consent of Seller (which it may withhold in its sole discretion). As a condition to receiving Seller's written consent, Buyer shall pay all reasonable cancellation and restocking charges incurred by Seller due to Buyer's cancellation of the order. Special orders for items not normally stocked by Seller are non-cancelable and non-refundable.

2. **DELIVERY.**

All prices quoted and goods shipped are F.O.B. Seller's place of shipment. Title to and risk of loss of all goods shall pass to Buyer when the goods are placed by Seller in possession of a common carrier selected by Buyer for shipment to Buyer. Unless expressly provided otherwise on the front of this Contract, Buyer shall pay all freight, handling, delivery, and insurance costs for the shipment of goods. Seller may refuse or delay any shipment if Buyer fails to pay promptly any payments due Seller, whether pursuant to this Contract or any other contract between Seller and Buyer. Seller may deliver goods covered by this Contract at one time or in portions, from time to time, within the time for delivery provided in this order.

3. **FORCE MAJEURE.**

Seller shall not be liable for delays in delivery or for failure to perform if its failure or delay of performance is caused by events or conditions beyond Seller's reasonable control, including without limitation, customs examination, loss or delay by common carrier, acts of God, acts of the public enemy, quarantine restrictions, industrial disturbances, blockades, insurrections, arrest and restraint of industrial people or rulers, civil disturbances, boycotts, acts or omissions of Buyer or civil or military authorities, fire, strike, lock-outs, landslide, lightning, wash-outs, tornadoes, hurricanes, windstorms, explosions, epidemics, flood, storm, earthquake, riot, war, breakage or accident of machinery or equipment. In the event of any delay, the contractual date of delivery shall be extended for a period equal to the time lost as a consequence of the delay without penalty to Seller.

4. **PAYMENT TERMS**

(a) Buyer shall pay for the goods in full, without offset or deduction, within the time frame and in the manner set forth on the front of this contract. For those sales that do not require payments in advance of or upon delivery, if payment is not received by Seller within the period set forth on the front of this Contract, Buyer shall pay to Seller, on demand, a late payment charge of 1.5% per month of the unpaid balance or the maximum rate of interest allowed by law, whichever is less. Time is of the essence with respect to Buyer's obligation to pay all invoices in full in a timely manner.

(b) All checks are accepted subject to collection. Acceptance of any partial payment shall not constitute waiver of Seller's right to payment in full of all amounts owing from Buyer to Seller.

(c) Buyer hereby grants to Seller a security interest in the goods shipped pursuant to this Contract, including all accessories to and replacements of the goods and the proceeds thereof, to secure the due and punctual payment of the purchase price of the goods and all other amounts owing hereunder. Buyer shall execute and delivery to Seller any additional documents, instruments, financing statements, or amendments that Seller deems necessary or advisable to maintain, continue, and perfect the security interest created.

5. **LIMITED WARRANTY.**

Subject to Section 6, Seller warrants that it has title to the goods and that the goods generally conform to the descriptions, if any, on the front of this Contract. The term manufacturer (Mfr) refers to the original manufacturer of the product when identified. For new goods, Fusion warrants the goods will perform to the manufacturer's stated specifications for form fit and function provided goods are used for their intended purpose. For other goods, THE FOREGOING WARRANTIES ARE SELLER'S EXCLUSIVE WARRANTIES, AND THE GOODS SOLD UNDER THIS AGREEMENT ARE SOLD "AS IS" AND "WITH ALL FAULTS". EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN. SELLER MAKES NO REPRESENTATION OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER RELATING TO THE GOODS,

INCLUDING WITHOUT LIMITATION THE DESIGN AND CONDITION OF THE GOODS OR THEIR QUALITY, CAPACITY, SUITABILITY, CONSTRUCTION, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. Buyer acknowledges that Seller is acting solely as a third party distributor of the goods covered by this invoice and that the licensor or the manufacturer of the goods shall be solely responsible to Seller and third parties for all liability, claims, damages, obligations, and costs and expenses related to the goods distributed by Seller. Buyer agrees to look solely to the manufacturer for compliance with the manufacturer's warranty and for any maintenance, support or repair of the goods. Seller assigns to Buyer any warranty delivered to Seller by a manufacturer or other vendor to the extent the assignment is permitted by the terms thereof. Seller makes no representation, covenant, or warranty with respect to the extent or enforceability of the manufacturer's warranty. No repair or replacement of goods by Seller or manufacturer shall extend to warranty period of the manufacturer. Seller neither assumes nor authorizes Buyer or any other person to assume on behalf of Seller any other liabilities in connection with the use, sale, or resale of the goods. Seller agrees to warrant all new goods for a period of not less than three (3) years and to maintain information including serial numbers, lot and date codes, and other information allowing suitable identification of product for warranty purposes. Seller warrants any products that are sold in other than new condition against DOA occurrences. Seller agrees to clearly define product status in all documentation and communication including any quote provided.

6. **LIMITATION OF LIABILITY.**

(a) Within 30 days after receipt of each shipment of goods, Buyer shall have the right to examine and test the goods to determine if there is any damage, defect, or shortage. All claims for any damage, defect, or shortages or for any cause whatsoever (whether the claim is based in contract, negligence, strict liability, other tort, or otherwise) shall be deemed waived unless made in writing and received by Seller within 30 days after Buyer's receipt of the goods, or, if the claim is for non-delivery of goods, within 30 days after the goods were to be delivered. Provided, however, that any claim not reasonably discoverable within that 30-day period (including a claim discoverable only in processing, further manufacture, other use, or resale) must be made in writing and received by Seller within 60 days after Buyer's receipt of the goods, or within 30 days after Buyer learns of the facts giving rise to the claim, whichever occurs first. Failure of Seller to receive written notice of any such claim within the

applicable time period shall be deemed an absolute and unconditional waiver by Buyer of the claim regardless of whether the facts giving rise to the claim shall have then been discovered or whether processing, further manufacture, other use, or resale of goods shall have then taken place.

(b) BUYER'S EXCLUSIVE REMEDY SHALL BE FOR DAMAGES AND SELLER'S TOTAL LIABILITY FOR ANY AND ALL LOSSES AND DAMAGES ARISING OUT OF ANY CLAIM WHATSOEVER WHETHER THE CLAIM IS BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE GOODS IN RESPECT TO WHICH THE CLAIM ARISES OR, PUNITIVE DAMAGES RESULTING FROM ANY CLAIM (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, BUSINESS LOSSES, DAMAGE TO PROPERTY, OR ANY LIABILITY OF BUYER TO ITS CUSTOMERS OR THIRD PARTIES). In no event is Seller liable to Buyer or any third party for any liability, claims, obligations, damages, costs, or expenses, including without limitation, any direct, indirect, special, incidental, or consequential damages (including lost profits, business losses, personal property damage, personal injury, and death) arising out of or relating to the sale of goods by Seller to Buyer or any related services provided to Buyer. Seller is not liable for, and Buyer assumes full liability for, all personal injury and property damage connected with the handling, transportation, possession, processing, repacking, further manufacture, or other use or resale of goods, whether the goods are used alone or in combination with any other material.

(c) Goods sold by Seller are not authorized to be used in life support equipment or for applications in which the failure or malfunction of the goods would create a situation in which personal injury or death could occur. Any such use or sale of goods sold by Seller is at the sole risk of Buyer, and Buyer agrees to indemnify and defend Seller against and hold Seller harmless from all damages and costs arising out of such use or sale.

7. **RETURNS.** Buyer may return to Seller any goods that are damaged or defective by obtaining a Return Material Authorization ("RMA") from Seller within 30 days from the receipt of the goods. Buyer must return to Seller the damaged or defective goods within the period set forth in the RMA. The RMA number must be listed on all packaging containing goods returned to Seller. If the Buyer does not request from Seller and RMA within 30 days, requests and RMA for goods that are not damaged or defective,

Seller may, at its sole discretion, issue an RMA and may require that Buyer pay to Seller a reasonable restocking fee as a condition of issuing to Buyer the RMA.

8. **SELLER'S RIGHT TO INCREASE PRICES.** Seller reserves the rights to increase the price of goods covered by this Contract to reflect any increase in Seller's costs for the goods caused by an increase in the price charged by Seller's supplier, and Buyer agrees to pay to Seller any such increased price according to the terms of this Contract.

9. **TAXES.** Seller's prices do not include sales, use, excise, or other similar taxes. Accordingly, Buyer shall pay, in addition to prices specified by Seller, all local, state, and federal taxes, including all sales, use, excise, other similar tax, payable with respect to the goods or the transactions contemplated herein, or, alternatively, provide Seller with tax exemption certificates acceptable to the applicable taxing authorities.

10. **PATENTS.** Seller disclaims any warranty against infringement with respect to the goods sold pursuant to this Contract, and Seller is not liable with respect to any actual or alleged infringement of any United States or foreign patent, trademark, copyright, maskwork right, trade dress, trade secret, or similar proprietary rights.

11. **DEFAULT.** In the event of default by Buyer, Seller shall have all the remedies provided under the Uniform Commercial Code, which shall be cumulative with one another and with any other remedies that Seller might have at law, in equity, under any agreement of any type or, without limitation, otherwise. The waiver by Seller of any breach hereof or default in any payment shall not constitute a waiver of any succeeding breach or default. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at another time or any other time or any other remedy at any other time. No action, regardless of type, arising out of, or in any way connected with, prosecuting, or defending any provision of this Contract. For purposes of this Contract, "costs" means the fees, costs, and expenses of experts, attorneys, mediators, witnesses, arbitrators, collection agents, and supercedes bonds, whether incurred before or after demand or commencement of legal proceedings, and whether incurred pursuant to trial, appellate, mediation, bankruptcy, arbitration, administrative, or judgement-execution proceedings.

12. **INTEGRATION AND ASSIGNMENT.** This Contract records the final, complete, and exclusive agreement between the parties with regard to the subjects addressed in it and supersedes any and all prior or contemporaneous oral or written agreements between them regarding the same. No course of prior dealings between the parties and no usage of the trade is relevant to supplement or explain any terms used in this Contract. Acceptance or acquiescence in a course of performance and opportunity for objection. An amendment or modification of this Contract will be valid and effective only if it is in writing and signed by both Buyer and Seller. Any assignment by Buyer of this Contract and any rights in it, without Seller's advance written consent, shall be void.

13. **BUYER'S TERMS AND CONDITIONS.** Goods furnished and services rendered by Seller to Buyer are sold only on the terms and conditions stated herein. Notwithstanding any terms or conditions on any document Buyer, the information and conditions on this document are controlling over Buyer and Seller. Any different or additional terms or conditions contained on Buyer's purchase order, invoice, confirmation, or any other Buyer generated document are specifically objected to by Seller. Seller's performance of any contract is expressly made conditional on Buyer's agreement to Seller's terms and conditions contained in this Contract. Commencement performance or delivery shall be for Buyer's convenience only and shall not constitute acceptance by Seller or Buyer's terms and conditions. If a contract is not earlier formed by mutual agreement between Buyer and Seller, acceptance of any goods or services by Buyer shall constitute acceptance by Buyer of the terms and conditions stated herein.

14. **GENERAL.** All agreements, covenants, conditions and provisions contained herein shall apply to and bind the assignees and successors in interest of Buyer. If any provisions of this Contract is held to be invalid, illegal, unconscionable, or unenforceable, that provision will be considered separable from the remaining provisions of this Contract, will be reformed and enforced to the extent that it is valid and lawful, and will not affect the validity, legality, or enforceability of any other provisions of this Contract. The captions used herein are the convenience of the parties only and shall not affect the construction or interpretation hereof. Nothing in this Contract, neither express or implied, is intended or should be construed to confer upon, or grant to, any person, except Buyer and Seller, any claim, right, or remedy under it.

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15. **INSPECTION AND TEST OF PRODUCT.** Seller will inspect product to ensure it is correct and authentic. As part of that inspection certain test may be performed. Testing includes the use of certain chemicals including acetone and a mixture of isopropyl alcohol and mineral spirits that tests for marking and surface permanency. These tests are considered non-destructive *unless specifically notified by the customer that they consider these tests destructive*. Similarly, Seller performs X-ray on parts to review lead frame, die and bond wire configuration. Exposure and power are limited. Seller submits that certain X-ray exposure may be damaging to certain parts. *Unless customer specifically submits radiation exposure data or determines that the test is destructive and notifies Seller of such determination at the point PO is placed, Seller considers this X-Ray test to be non-destructive.* Seller may conduct other tests, including chemical decap, solderability, and heated chemical test which are considered destructive tests. Seller will furnish a report of the inspection and test of product to the Buyer upon request, or if required by contract, standard, or customer requirement, automatically as part of the transaction. Seller will maintain a record of the inspection and test in its system electronically for an indefinite period.

16. **TRACEABILITY:** Seller maintains records of traceability for each transaction within its system

electronically for an indefinite period. This includes documentation provided with the goods, serial numbers if product is serialized, lot and date code information, photos of product, packaging and carrier, as well as the purchasing documentation. For goods that are sold as directly traceable, Fusion maintains the documentation as well as verification of that direct traceability on the date of product receipt as a record in its system electronically for an indefinite period of time. Seller shall provide to Buyer evidence of such should there be an audit triggered by a US Government body, DFARS audit requiring traceability documentation, or in the event there is a failure or other issue with the product.

17. **BUYER REQUIREMENTS:** Seller shall understand Buyer requirements with respect to product source, inspection and test, reporting, record retention, and any other such requirement that Buyer may have or impose and agree to meet those requirements before accepting Buyer's purchase order. Seller further agrees that at any time they should determine that they cannot meet any of Buyer's stated requirements or the source or nature of the product changes in any way, Seller shall inform Buyer immediately via the most expeditious means possible. Seller shall flow down requirements to sub-tier suppliers as applicable and defined in the Purchase terms and conditions.