



## **FUSION TECH INTEGRATED, INC.**

218 20th Avenue, Roseville, IL 61473  
Phone 309-774-4275 Fax 309-774-4288

### **STANDARD TERMS AND CONDITIONS OF SALE**

By submitting an Application for New Account and Credit Application ("Credit Application") to **FUSION TECH INTEGRATED, INC.** (hereinafter referred to as "Seller"), the applicant identified on the Credit Application (hereinafter referred to as "Buyer") agrees to be bound by the following terms and conditions which shall supersede any inconsistent or conflicting terms or conditions in any subsequent purchase order, acknowledgement, release, memorandum, or other oral or written statement unless specifically agreed to by Seller in writing:

1. **APPLICABILITY:** This document (the "Agreement") is a binding contract between Buyer and Seller which shall govern all purchases between Buyer and Seller.

2. **PRICE:** All prices may be changed by Seller without notice to conform with those in effect at date of shipment. Should any governmental action or request prevent Seller from making such price change, or from continuing any price already in effect, Seller may terminate the contract provided buyer is given ten (10) days notice in writing. In addition to the purchase price of the goods sold hereunder, Seller shall have the right to collect from Buyer the full amount of any tax, including interest and penalties, now or hereafter imposed on Seller as a result of the manufacture, sale, delivery, use or other handling of any goods or materials manufactured or sold, or any component part thereof, as a direct or indirect result of this contract.

3. **PAYMENT TERMS:** All invoices are due and payable in cash unless otherwise specified. Each order for Seller's products by Buyer shall be considered a separate transaction and the terms for payment for each purchase shall be:

- a. One-half percent ( $\frac{1}{2}$  %) discount if payment is received in ten (10) days.
- b. Net due in thirty (30) days, unless otherwise agreed in writing by Buyer and Seller.
- c. All balances not paid within 45 dates of invoice will be assessed interest at a rate of .833 percent per month (10.0% per annum) if permitted by law, otherwise at the highest legal rate, until paid.
- d. All purchases of less than \$250.00 require payment prior to delivery.
- e. Buyer shall pay any and all expenses which may be incurred by Seller, including reasonable attorneys' fees and costs, in collection of any amount due and owing by Buyer to Seller pursuant to an extension of credit hereunder. Buyer further agrees that, in the event its account becomes past due, Seller may, in its sole and absolute discretion, cease shipments against any other purchase order(s) submitted by Buyer at any time.

4. **DELAYS:** Seller shall not be liable because of late delivery or non-delivery caused by: fire, flood, war, riot, insurrection, civil disorder, strike, freight embargo or transportation delay, shortage of labor, accident, failure in production or production equipment, delay of vendor, inability to secure fuel, raw materials, supplies or power at current prices or on account of shortage thereof, act of God or of the public enemy, any existing or future law or act of the Federal or of any State or Local Government (including, but not limited to, any orders, rules or regulations issued by an official or agency of such government) affecting the conduct of Seller's business or to any cause beyond Seller's reasonable control.

5. **DELIVERY:** All goods are sold F.O.B. at Seller's plant unless otherwise agreed in writing by Buyer and Seller. Delivery to carrier at a point of shipment shall constitute delivery to Buyer and Buyer shall assume all risks for subsequent loss or damage. All claims for loss or damage in transit, if any, must be made by the Buyer against the carrier and at Buyer's expense.

6. **MATERIAL SUBSTITUTION:** Where materials are specified by generic designation, Seller reserves the right to select the supplier of such materials.

7. **CHANGES:** Seller assumes no responsibility for any changes in specifications, unless such changes are confirmed in writing by Buyer and accepted in writing by Seller. Any price variation resulting from such changes shall become effective immediately upon the acceptance of such changes by Seller.

8. **CANCELLATION:** The goods covered by this order are being made expressly for Buyer, and an order cannot be cancelled or modified except upon a basis that will assure Seller against loss and upon Seller accepting such cancellation in writing.

9. **GUARANTY:** In the event Buyer is a corporation, limited liability company, or any other business entity, the individual(s) signing the Credit Application (each now defined as a "Guarantor"), regardless of the capacity in which such individual(s) execute the Credit Application, in order to induce Seller to extend credit to Buyer, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby unconditionally and irrevocably personally guarantees the prompt payment to Seller of the purchase price for all Seller's products purchased from Seller and all other amounts payable under the terms and conditions as set forth above.

10. **PATENTS, COPYRIGHTS AND TRADEMARKS:** Buyer shall hold Seller harmless against any expense or loss, including attorneys' fees, resulting from any claim of unfair competition or infringement of any patent, trademark, trade name, copyright, or other property right arising from compliance with Buyer's designs or specifications or instructions. Buyer shall be exclusively responsible for and shall, at Buyer's expense, indemnify and defend Seller against all liability for any and all claims founded upon the legal effect and use, or omission, of any designs, devices or words, including any wording required by any Federal, State or Local laws or ordinances, which Buyer may order incorporated in or imprinted or placed on the goods, notwithstanding that Seller may have been consulted thereon, or performed design work or other special services in connection therewith. Nothing in this paragraph shall be construed to alter or enlarge the obligations of Seller as set forth in the Warranty paragraphs.

11. **WARRANTY AND LIMITATION OF WARRANTIES:** Seller guarantees that all goods of its manufacture shall meet agreed designs and specifications. FOR PRODUCTS NOT OF SELLER'S MANUFACTURE NO WARRANTIES EITHER EXPRESSED OR IMPLIED, ARE MADE; AND BUYER'S RECOURSE SHALL BE SOLELY AGAINST THE MANUFACTURER. THE SELLER MAKES NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED AND ANY OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SELLER, WHICH NEITHER ASSUMES OR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THIS AGREEMENT.

12. **LIMITATION OF REMEDIES AND DAMAGES:** THE LIABILITY OF SELLER ON ANY CLAIM, INCLUDING THOSE FOR DEFECTIVE MATERIALS AND WORKMANSHIP, IS LIMITED TO

REFUND OF PURCHASE PRICE OR REPLACEMENT OF DEFECTIVE MATERIALS OR SUCH COMBINATION AS SELLER MAY ELECT. SELLER SHALL NOT BE LIABLE FOR PROSPECTIVE PROFITS OR SPECIAL INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND. BUYER ASSUMES ALL RISK AND LIABILITY FOR LOSS, DAMAGE OR INJURY TO PERSONS OR PROPERTY OF BUYER OR OTHERS ARISING OUT OF THE USE OF THE GOODS SOLD HEREUNDER. BUYER DOES HEREBY EXPRESSLY RELEASE THE SELLER FROM ANY AND ALL CLAIMS, OTHER THAN PURSUANT TO THE WARRANTIES HEREIN MADE, ARISING IN WHOLE OR IN PART OUT OF THE GOODS MANUFACTURED PURSUANT HERETO, WHETHER SUCH CLAIMS ARE BASED UPON NEGLIGENCE, BREACH OF WARRANTY, STRICT TORT LIABILITY, OR OTHERWISE FOUNDED.

13. **DESIGNS AND SPECIFICATIONS FOR GOODS:** All goods to be manufactured by Seller are manufactured to the designs and specifications of Buyer. SELLER'S WARRANTY SHALL NOT INCLUDE DEFECTS RESULTING FROM BUYER'S DESIGNS AND SPECIFICATIONS AND BUYER SHALL HOLD SELLER HARMLESS AGAINST ANY EXPENSE OR LOSS, INCLUDING ATTORNEYS' FEES, RESULTING FROM DEFECTS IN THE GOODS CAUSED BY BUYER'S DESIGNS AND SPECIFICATIONS.

14. **CREDIT CHECK:** Buyer authorizes Seller and its agents to verify the information provided in the Credit Application, to obtain credit information regarding Buyer and/or its principals from credit reporting agencies (e.g., Equifax, Experian and Trans Union) and any other source (e.g., Dun & Bradstreet, Inc.) in relation to the extension of credit requested by Buyer hereunder, and to investigate, at Seller's sole discretion, the trade and bank references listed above with respect to Buyer's financial responsibility and creditworthiness.

15. **CLAIMS:** Buyer shall have thirty (30) days after receipt of the goods to inspect and either accept or reject them. Failure to reject goods within such period shall constitute an irrevocable acceptance of the goods and an admission that the goods fully comply with all the terms, conditions and specifications of sale. Replacement of defective goods or repayment of the purchase price for defective goods shall be made only upon return thereof after inspection by Seller and Buyer's compliance with written shipping instructions from Seller. Seller will not accept goods returned without its express authority in writing.

16. **APPLICABLE LAW.** This Agreement shall be interpreted and the rights and obligations of the parties hereto shall be governed and determined by the Uniform Commercial Code and the other internal laws of the State of Illinois. Whenever the term "Uniform Commercial Code" is used herein, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Illinois as effective and in force on the date of a sale of the relevant goods. Whenever a term defined by the Uniform Commercial Code is used in these Conditions, the definition contained in the Uniform Commercial Code shall determine its meaning as used herein.

17. **FORUM:** The Seller, Buyer and Guarantor hereby agree that all actions or proceedings arising directly or indirectly from this agreement shall be litigated in Peoria County, Illinois, and expressly waives any claim or right to have any such lawsuit placed in any other county or state. The Seller, Buyer and Guarantor also submit themselves to the jurisdiction of the State of Illinois in respect to all actions or proceedings arising directly or indirectly from this Agreement.

18. **AGREEMENT:** Any of the terms and conditions of Buyer's order which are inconsistent with the terms and conditions hereof shall not be binding on Seller and shall not be considered applicable to the sale or shipment of the goods mentioned and referred to herein. This proposal and any attachments made a part of it, when accepted by Buyer and approved by Seller, constitute the entire contract concerning the goods. No waiver, alteration or modification of any of the provisions hereof shall be binding on Seller unless made in writing and agreed to in writing by a duly authorized official of Seller. Waiver by Seller of any default by Buyer hereunder shall not be deemed a waiver by Seller of any default by Buyer which may thereafter occur. Seller's failure to object to provisions contained in any communication from Buyer shall not be deemed an acceptance of such provisions or as a waiver of the provisions of this contract.