



# FUSIONWORLDWIDE

## PURCHASE ORDER TERMS AND CONDITIONS

1. **APPLICABILITY.** This purchase order is an offer by Fusion Trade, Inc. (the "**Buyer**") for the purchase of the goods ("**Goods**") and/or services ("**Services**") (the Goods and/or Services purchased hereunder may also be referred to individually or collectively as the "**Purchased Items**") specified on the face of this purchase order from the party to whom the purchase order is addressed (the "**Seller**") in accordance with and subject to these terms and conditions (the "**Terms**"; together with the terms and conditions on the face of the purchase order, the "**Order**"). This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller's acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with this Order. These Terms apply to any repaired or replacement Purchased Items provided by Seller hereunder. Buyer is not obligated to any minimum purchase or future purchase obligations under this Order.
2. **ACCEPTANCE.** This Order is not binding on Buyer until Seller accepts the Order in writing or starts to perform in accordance with the Order. If Seller does not accept the Order in writing or provide written notice that it has commenced performance within ten (10) days of Seller's receipt of the Order, Buyer may withdraw the Order at any time before it is accepted by Seller.
3. **DELIVERY DATE.** Seller shall deliver Purchased Items on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). Timely delivery of Purchased Items is of the essence. If Seller fails to deliver Purchased Items in full on the Delivery Date, Buyer may terminate the Order immediately by providing written notice to Seller, and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver Purchased Items on the Delivery Date. Buyer has the right to return any Goods delivered prior to the Delivery Date at Seller's expense, and Seller shall redeliver such Goods on the Delivery Date.
4. **QUANTITY.** If Seller delivers more or less than the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's risk and expense. If Buyer does not reject Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.
5. **DELIVERY LOCATION.** All Goods shall be delivered to the address specified in this Order (the "**Delivery Location**") during Buyer's normal business hours or as otherwise instructed by Buyer. All Services shall be provided at Seller's address and/or Buyer's address specified in this Order, or at such other locations as mutually agreed in writing by Buyer and Seller.
6. **SHIPPING TERMS.** Delivery of Goods shall be made according to the terms listed on the Purchase order. Seller shall give written notice of shipment to Buyer when Goods are delivered to a carrier for transportation. Seller shall provide Buyer all shipping documents, including the commercial invoice, packing list, air waybill/bill of lading and any other documents necessary to release Goods to Buyer. The Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Order. All international shipments of Goods must have accurate import and/or export values. Buyer will not accept charges other than for the carriage of the goods unless previously agreed in writing.
7. **TITLE AND RISK OF LOSS.** Title to Goods passes to Buyer upon delivery of Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of Goods to the Delivery Location.
8. **PACKAGING.** All Goods shall be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. All Goods must be packaged in accordance with IPC/JEDEC J-STD-033 for moisture sensitive Goods and JESD625 for ESD sensitive Goods. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's expense.

9. **AMENDMENT AND MODIFICATION.** No change to this Order is binding upon Buyer unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of Buyer.

10. **INSPECTION AND REJECTION OF NONCONFORMING GOODS.** The Buyer has the right to inspect Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of Goods, and may reject all or any portion of Goods if it determines the Goods are nonconforming or defective. All Goods substitutions will be rejected. If Buyer rejects any portion of Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to Section 21. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions. Goods that are determined to be counterfeit will be deemed to have 0 value.

11. **PRICE.** The price of Purchased Items is the price stated in the Order (the "**Price**"). Unless otherwise specified in the Order, the Price includes all packaging, insurance, export fees and applicable taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

12. **PAYMENT TERMS.** Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with the Terms. Unless otherwise agreed in writing by both parties, Buyer shall pay all properly invoiced amounts due to Seller within thirty (30) days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. All payments hereunder must be in US dollars. In the event of a payment dispute, Buyer shall deliver a written statement to Seller no later than two (2) days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section 12. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute.

13. **SETOFF.** Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at

any time any amount owing to it by Seller against any amount payable by Buyer to Seller under the Order.

14. **SELLER SITE INSPECTION AND AUDIT.** Seller shall permit, and shall cause all of its vendors, sub-vendors, contractors, and their respective subcontractors and sub-vendors that are involved in the production of Goods or the provision of Services to permit, Buyer, any of Buyer's customers, or any regulatory agency with regulatory authority over Buyer or its customers, to (a) inspect the applicable areas of each of their respective facilities involved in the development of, manufacture of, sale to, or provision to, Buyer of Purchased Items to Buyer, and (b) review all documentation in the possession of each such person or entity that directly or indirectly relates to the development of, manufacture of, sale to, or provision to, Buyer of Purchased Items; provided that the inspecting or auditing party provides no less than five (5) business days prior written notice of such inspection or audit the Seller.

15. **DOCUMENT RETENTION.** Seller shall maintain copies of all documentation and other data relating to Purchased Items for no less than ten (10) years from the Order date.

16. **WARRANTIES.** Unless otherwise stated in the purchase order, Seller warrants to Buyer that for a period of three (3) years from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; (f) not infringe or misappropriate any third party's patent or other intellectual property rights; (g) be new, unused and in the original manufacturers packaging; and (h) be free of any unapproved or counterfeit parts. Seller warrants that all Services will: (a) conform to the applicable specifications and other requirements specified by Buyer; (b) be performed in a professional manner in accordance with industry standards, and (c) not infringe or misappropriate any third party's patent or other international property rights. Seller shall notify Buyer immediately after it becomes aware of a breach of the any of the forgoing Purchased Items warranties. At Buyer's request, Seller shall provide a Certificate of conformity, test reports, or authorized release certificates, as applicable, with respect to any Purchased Items. These warranties survive any delivery, inspection, acceptance or payment of or for Purchased Items by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Purchased Items with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace, repair, or reperform (in the case of Services) the defective or nonconforming Purchased Items and pay for all related expenses, including, but not limited to (in the case of Goods), transportation charges for the return of the

defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer.

17. **GENERAL INDEMNIFICATION.** Seller shall defend, indemnify and hold harmless Buyer its subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders and employees and Buyer's customers (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the Purchased Items purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

18. **INTELLECTUAL PROPERTY INDEMNIFICATION.** Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Purchased Items infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

19. **INSURANCE.** During the term of the Order and for a period of three (3) years thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$1,000,000 with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in this Order. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with thirty (30) days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the Indemnitees.

20. **CONSOLIDATION.** Multiple orders or multiple units shipping to the same Buyer location on the same day shall be consolidated into one shipment as opposed to multiple shipments to the Seller location. Failure to consolidate may result in chargebacks of the amount of freight for the multiple shipments versus the single consolidated shipment.

21. **COMPLIANCE WITH LAW.** Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order. Seller shall comply with all export and import laws

of all countries involved in the sale of Purchased Items under this Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Buyer may terminate this Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on Goods.

22. **TERMINATION.** Buyer may terminate this Order, in whole or in part, at any time with or without cause, for undelivered Purchased Items on one (1) day's prior written notice to Seller. In addition to any remedies that may be provided under these Terms, Buyer may terminate this Order with immediate effect upon written notice to Seller, either before or after the acceptance of the Purchased Items, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Order upon written notice to Seller. If Buyer terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Purchased Items received and accepted by Buyer prior to the termination.

23. **ADDITIONAL FLOW DOWN PROVISIONS.** Certain of Buyer's customers may require Buyer to "flow down" certain obligations or terms between Buyer and its Customer ("**Flow Down Provisions**") to Seller, Seller's vendors and contractors, and their respective subcontractors and sub-contractors. Any such Flow Down Provisions shall be included on the face of the Order, or otherwise attached to the Order and incorporated by reference on the face page of the Order, and shall be deemed part of the Order. To the extent required, Seller shall cause its vendor and sub-contractors to comply with any Flow Down Provisions. Specifically Orders processed for Aerospace/Defense builds: Seller shall maintain copies of documentation and other data connected to this purchase order for ten (10) years from order date. To ensure conformance to all Purchase Order requirements, Seller shall flow down all applicable requirements to Seller's sub-tier sources, when such sources are used by Seller for procurement or processing of products. Seller shall allow the right of access by the organization, their customer, and regulatory authorities to the applicable areas of facilities and to applicable documented information, at any level of the supply chain; Seller shall provide a certificate of conformity, test reports, or authorized release certificate, as applicable. Seller shall prevent the use or shipment of suspected unapproved, unapproved, and counterfeit parts. Seller shall notify buyer of nonconforming processes, products, or services and obtain approval for their disposition; prevent the use of such products. Seller shall flow these and any additional requirements down to their sub-tier and external suppliers. Seller shall ensure that persons are aware of:

- their contribution to product or service conformity;
- their contribution to product safety;
- the importance of ethical behavior.

Specific flow down requirements may be attached to this purchase order and

shall be retained as above. Reference to these requirements will be made in the description section.

24. **LIMITATION OF LIABILITY.** Nothing in this Order shall exclude or limit (a) Seller's liability under Sections 16, 17, 18 and 25 hereof, or (b) Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

25. **WAIVER.** No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

26. **CONFIDENTIAL INFORMATION.** All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

27. **FORCE MAJEURE.** Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Seller from carrying out its obligations under the Order for a continuous period of more than

fifteen (15) business days, Buyer may terminate this Order immediately by giving written notice to Seller.

28. **ASSIGNMENT.** Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign, transfer or subcontract any or all of its rights or obligations under the Order without Seller's prior written consent.

29. **RELATIONSHIP OF THE PARTIES.** The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order.

30. **GOVERNING LAW.** All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Massachusetts or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Massachusetts.

31. **SUBMISSION TO JURISDICTION.** Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted in the federal courts of the United States of America or the courts of the Commonwealth of Massachusetts in each case located in the City of Boston and County of Suffolk, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

32. **CUMULATIVE REMEDIES.** The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

33. **NOTICES.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Order, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

34. **SEVERABILITY.** If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

35. **SURVIVAL.** Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Setoff, Warranties, General Indemnification, Intellectual Property, Indemnification, Insurance, Compliance with Laws, Confidentiality, Governing Law, Submission to Jurisdiction and Survival.