



FUSION EMS

Standard Terms and Conditions

FOR ORDER ACCEPTANCE CSF-1008

In the absence of an executed agreement between parties, the following Terms and Conditions for Order Acceptance will apply.

1. Recital. Manufacturer is an electronics manufacturing services provider that furnishes the personnel, material, equipment, services and facilities to manufacture products for original equipment manufacturers and other third parties in accordance with specifications provided by such OEMs and third parties. Buyer desires to engage Manufacturer to manufacture certain of Buyer's products in accordance with orders issued from time to time by Buyer.

2. Statement of Work. Buyer hereby engages Manufacturer, and Manufacturer hereby accepts Buyer's engagement, to furnish the personnel, material, equipment, services and facilities to manufacture Products in accordance with Buyer provided Specifications (BOM, AML, Gerber Files, CAD Files, Test Processes, Mechanical Drawings and other Special Instructions) as required by Orders issued by Buyer and accepted by Manufacturer in accordance with Section 3. Manufacturer's electronics manufacturing services shall be performed in accordance with the Specifications and the applicable IPC-A-610 Workmanship Standard.

3. Ordering. (a) Manufacturer's terms and conditions of acceptance are solely within the Manufacturer's discretion. Buyer's Orders shall set forth for each ordered Product: the quantity, the applicable Purchase Price and total price, delivery and shipping instructions, the requested delivery schedule, which may be adjusted through regular status reports issued by the manufacturer in accordance with Section 4. All Orders shall be governed by these Terms and Conditions, which shall not be changed or supplemented without written acceptance by the Manufacturer. Pre-printed terms and conditions on Buyer's Order form, if any, shall not apply to the Order. No Order is accepted unless Manufacturer issues a Sales Order Acknowledgement. (b) Order Modification, Cancellation, or Delivery Schedule Changes requested by Buyer will be binding on the Manufacturer upon Manufacturer's written acceptance of the request and upon terms, satisfactory to Manufacturer that compensate Manufacturer for all costs incurred by reason of such modification, cancellation or deferment. "Costs" as used herein includes engineering, production and overhead costs attributable to the order as well as NCNR Inventory and Excess Inventory and profits not realized by the Manufacturer due to modification, cancellation or schedule changes. In the event of Order cancellation (i) Manufacturer will ship and Buyer will accept all Products completed prior to the cancellation date [and (ii) the Product warranty will not apply to the Product which is the subject of the cancelled order. (c) Tooling and Fixtures required to manufacture Buyers products, will be a one-time charge based on a quote for each design. Buyer will retain ownership of the Tooling and Fixtures upon paid invoice. Customer may request tooling and fixtures be returned to them for up to one year from last shipment of the associated product. After one year of inactivity the tooling and fixtures will be disposed of.

4. Shipment and Delivery. Manufacturer will ship Products in accordance with each accepted Order, subject to these Standard Terms and Conditions. Delivery of Products shall be made F.O.B at the loading dock of the Manufacturer's facility on the dates specified in the Weekly Status Report issued by Manufacturer listing all pending Orders and the production status of pending Orders. Title to, and risk of loss for, Products shall pass to Buyer at the time of delivery of possession of the Products to a common carrier.

5. Acceptance. The Product shall be deemed accepted by Buyer when the Product has passed Manufacturer's inspection and conforms to Specifications and the applicable IPC-A-610 Workmanship Standard and is delivered to Buyer, namely, placed it in the hands of a common carrier. Buyer shall have [30] days to notify Manufacturer of Buyer's revocation of acceptance of Product based on non-conformance to specifications or to the workmanship standard. Buyer's revocation must be in writing.

6. Prices, Invoicing and Payment. Buyer shall pay Manufacturer the Purchase Price as set forth in the Sales Order Acceptance or in any invoice pertaining to a modification or cancellation. The Purchase Price is exclusive of packaging, shipping and insurance costs and federal, state and local taxes, which shall be borne by Buyer. Manufacturer shall invoice Buyer concurrently with each Product shipment. An invoice will include the invoice date, the Order number, and the total price and name (if applicable) and address where payment is to be sent. Buyer shall pay all invoices within thirty (30) days of the invoice date. Payment shall be made in U.S. dollars. Payment not received when due shall bear interest at the rate of 1½% monthly from its due date until paid.

7. Engineering Changes. If Buyer requests that Manufacturer incorporate an engineering change into a Product, such request shall include a description of the proposed change sufficient to permit Manufacturer to evaluate it. Manufacturer's evaluation shall be in writing and shall state the impact of the requested change on the existing delivery schedule and cost. Manufacturer shall not be obligated to proceed with a requested change until the parties have agreed on the changes to the Product, Specifications, estimated delivery schedule and pricing, including the price for additional NRE, rework, tooling and obsolete materials and testing, if any.

8. Force Majeure. Neither party shall be liable for its failure to perform due to any occurrence beyond its reasonable control, including acts of God, fire, floods, war, terror, sabotage, accidents, labor disputes or shortages, governmental laws, ordinances and regulations, allocations and price restrictions, inability to obtain material, equipment or transportation, or any other similar occurrence; provided, however, Buyer's payment for Products produced and shipped shall not be suspended by any event of force majeure. The party whose performance is prevented by any such occurrence shall promptly give written notice to the other party of the cessation of performance. The party affected by such occurrence shall use commercially reasonable efforts to minimize the effects of the force majeure event.

9. Intellectual Property and Confidentiality. (a) Ownership of Intellectual Property. Title to and ownership of all of the technology, trade secrets, knowhow and information regarding Products supplied by Buyer to Manufacturer shall remain in Buyer. Buyer hereby grants Manufacturer a limited, non-transferable, non-exclusive revocable license to use Buyer's software, technology, trade secrets, knowhow and proprietary information (Buyer's Proprietary Information), free of any claim or allegation by Buyer of misappropriation or infringement by Manufacturer of Buyer's Proprietary Information; provided, however, that Manufacturer's license to use Buyer's Proprietary Information shall endure only for the term of the accepted Order. After the termination or expiration of an accepted Order, Manufacturer shall have no further rights to use Buyer's Proprietary Information as to that Order and Manufacturer shall return to Buyer all documents and materials relating to Buyer's Proprietary Information. Title to and ownership of any software, technology, trade secrets, know how, and information of Manufacturer (Manufacturer's Proprietary Information) used by Manufacturer hereunder shall remain the property of Manufacturer. (b) Confidentiality. The parties acknowledge that each party's Proprietary Information set forth in Section 9 (a) contains valuable trade secrets. Each party agrees that it will maintain and protect the confidentiality of the other party's Proprietary Information using the same standard of care that such party uses to protect its own Proprietary Information, which in no event shall be less than reasonable care. The obligation to keep each party's Proprietary Information confidential survives the termination or expiration of the accepted Order.

10. Manufacturer Restrictions as to Use of Products. Buyer acknowledges and agrees that the Products are not designed for and, absent Manufacturer's express written authorization, are not to be used in IPC Class 3 products (equipment where continued performance or performance on demand is critical such as life support systems or critical weapons systems).

11. Product Warranty. Manufacturer warrants that Products supplied to Buyer hereunder will conform to Buyer's Specifications and will be free from defects in workmanship for a period of ninety (90) days from the date of delivery of the Products to Buyer. Buyer shall notify Manufacturer within [48] hours of Buyer's receipt of

Products, in writing, of any Product defect, which notification shall describe the defect in sufficient detail to permit Manufacturer to isolate the defect. Upon notification from Buyer, Manufacturer will provide Buyer with instructions on returning the Product under a warranty claim. Upon receipt of any Products returned by Buyer pursuant to this Section 11, Manufacturer shall inspect Products in accordance with the applicable IPC-A-610 Workmanship Standard. If Manufacturer determines that the defect is not due to nonconformity with Specifications or the applicable IPC-A-610 Workmanship Standard or is unable to isolate any defect or malfunction in the Product, then Buyer is solely responsible for isolation of the defect or malfunction and Manufacturer will seek instructions on whether Manufacturer should return the Product to Buyer or dispose of it.

If any returned Product contains malfunctions due to nonconformity with the Specifications or the applicable IPC-A-610 Workmanship Standard, then Buyer's exclusive remedy and Manufacturer's sole liability under this warranty will be, at its sole option and expense, to correct or replace the nonconforming or defective Product or refund the Purchase Price to Buyer. This warranty does not apply to: any first articles, prototypes, pre-production units, test units of a Product, any Products which have been repaired by Buyer or a third party, any Products which have been altered or modified in any way by Buyer or third party; or any Products which have been subject to misuse, abnormal use or neglect or to components received from Buyer. Fusion EMS will not be held liable in the case of damage to a product that occurs during customer contracted rework.

12. DISCLAIMER. THE PRODUCT WARRANTY STATED ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES AS TO QUALITY, FITNESS FOR PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE, WHETHER IMPLIED BY CUSTOM OR LAW. WITHOUT LIMITING THE FOREGOING DISCLAIMER, BUYER ACKNOWLEDGES AND AGREES THAT MANUFACTURER DOES NOT WARRANT ANY PARTS, COMPONENTS OR OTHER MATERIALS PROVIDED TO MANUFACTURER BY BUYER AND USED IN THE MANUFACTURE OF THE PRODUCTS.

13. LIMITATION OF LIABILITY. IN NO EVENT SHALL THE MANUFACTURER BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFITS DAMAGES, ARISING OUT OF THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT, OR USE OF ANY PRODUCTS OR THE FURNISHING OF ANY SERVICE, WHETHER SUCH LIABILITY IS BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF BUYER HAS BEEN WARNED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

14. Indemnification. Buyer shall defend, indemnify and hold Manufacturer and its subsidiaries, officers, directors, employees, agents and representatives harmless from any and all claims, demands, liabilities, actions, suits, proceedings, losses, injuries, death, judgments, and/or costs (including without limitation reasonable attorneys' fees and related costs) based on or arising out of any claims or demands based on or relating to: Manufacturer's use of Buyer's Proprietary Information the design of the Products; Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of the Products; Buyer's violation or alleged violation of any federal, state, or local laws or regulations, including the laws and regulations governing product safety, labeling, packaging and labor practices; or a breach by Buyer of any of these terms and conditions. Manufacturer shall give written notice of any claim or potential claim to Buyer within a reasonable time following the time at which Manufacturer first became aware of the claim for indemnification hereunder. Buyer may, at its option, have control of any litigation and appointment of counsel in defense of any third party claim for which Manufacturer seeks indemnification. No suit or proceeding shall be settled or compromised without the prior written consent of Manufacturer. The obligation to indemnify under this shall survive the termination or expiration of the accepted Order.

15. Governing Law, Merger. (a) Merger. These Terms and Conditions and the agreements referenced herein constitute the entire agreement of the parties with respect to Manufacturer's services for Buyer and can be modified only by written agreement. (b). Governing Law. The validity, interpretation and performance of these Terms and Conditions shall be governed by the laws of the State of Oregon, without regard to conflicts of laws principles. Venue for any suit, action or proceeding pertaining to these Terms and Conditions, including any Order, Invoice, Warranty or indemnification claim, shall be in the state or federal courts of the State of Oregon, as Manufacturer elects. In any arbitration, suit or action to enforce these Terms and Conditions or for the breach of same, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses therein, including expert fees, deposition costs and attorneys fees as fixed by the arbitrator, trial court and appellate court.

Approvals

For approvals see PCR # 4401.

Revision History

Revision	PCR #	Date	Pages Changed	Change Description
C	4401	10/29/2014	Page 1	Added additional info on tooling and fixtures. Refer to PCR # 4401.
B	3935	11/08/2013	1-3	Updated document.
A	3189	10/1/2013		No Changes Needed.