



Terms & Conditions

TERMS AND CONDITIONS OF SALE

The sale of all products and services by Fusion Tech Integrated, Inc. ("Fusion Tech") to the purchaser ("Customer") shall be subject to and governed by these terms and conditions of sale (these "Terms and Conditions"). Fusion Tech's acceptance of any order or other offer by Customer (whether in writing, by telephone or otherwise) for any products or services shall be conditioned upon Customer's assent to these Terms and Conditions. Such assent shall be deemed given upon the earlier of: (i) Customer's acceptance of these Terms and Conditions pursuant to a credit application containing or referencing these Terms and Conditions; (ii) Customer's acceptance of these Terms and Conditions pursuant to a separate agreement by and between Fusion Tech and Customer containing or referencing these Terms and Conditions (a "Separate Agreement"); (iii) Customer ordering products or services from Fusion Tech based on a Fusion Tech quotation or proposal, or by means of purchase order submitted by Customer and accepted by Fusion Tech, in any case containing or referencing these Terms and Conditions; (iv) delivery of products or services to Customer where Customer has received written notice of these Terms and Conditions, however gained, including, without limitation, in a Fusion Tech quotation, proposal, acknowledgement, bill of lading, invoice or any other writing (including, without limitation, electronic correspondence) containing or referencing these Terms and Conditions; or (v) payment by Customer to Fusion Tech for Fusion Tech's products or services where Customer has received written notice of these Terms and Conditions, however gained, including, without limitation, in a Fusion Tech quotation, proposal, acknowledgement, bill of lading, invoice or any other writing (including, without limitation, electronic correspondence) containing or referencing these Terms and Conditions. No additional or different terms or conditions, whether contained in a purchase order or any other communication from Customer (whether written or oral and whether previously given or later asserted), shall be binding upon Fusion Tech (unless specifically agreed to in writing by an executive officer of Fusion Tech), and Fusion Tech objects to and rejects any provision additional to or different from these Terms and Conditions. The failure of Fusion Tech to object to any such additional or different terms or conditions shall not be a waiver of these Terms and Conditions or an acceptance of such additional or different terms or conditions. No modification or amendment of, or addition to, these Terms and Conditions or any Customer order accepted by Fusion Tech shall be binding unless in writing and signed by an executive officer of Fusion Tech.

CUSTOMER'S RESPONSIBILITIES REGARDING FUSION TECH INSTALLATION SERVICES. If Customer has elected for Fusion Tech to provide installation services of any product, Customer warrants that it is responsible for the following:

- Site Preparation - Prepare a clear area of adequate size for installation, and provide adequate roadway to building access opening. Furnish materials and/or labor for cutting, patching, altering, or reinforcing of building, as may be required to accommodate Fusion Tech's equipment. Provide temporary walls or partitions, as required by the Food Safety and Inspection Service (FSIS), the Occupational Safety and Health Administration (OSHA), the Food and Drug Administration (FDA), or any other regulatory agency to separate manufacturing area from installation area.
 - Receiving - Receive, unload, and store equipment in a suitable place protected from the elements. Should the unloading and storage area be other than the actual installation site, it will, at the time of installation, be Customer's responsibility to transport the equipment to the job site location.
 - Permits - Secure all permits, approvals, etc., as may be required for the installation and use of the equipment.
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- Field Erection - Furnish labor and materials to erect the equipment on the site.
- Concrete Work - Furnish and install all concrete fill between steel safety tread floor and plant sub-floor. Fusion Tech ovens are constructed with zero degrees of slope. If slope is required (recommended) then concrete must be finished by the Customer at an agreed upon angle between Fusion Tech and the Customer. Concrete slope must continue past the open door dimension of the oven on the drain side to allow the doors on the oven to work properly. Floor needs to be smooth and flat without any concave or convex surfaces in which the oven would be sitting on.
- Sealing - Furnish and install all material for sealing around base of Fusion Tech's unit to plant floor.
- Plumbing Work - Furnish and install all sewer pipes and traps, and make final connection to floor drains (if applicable). Fusion Tech ovens do not come standard with any type of drain system. This is considered an option and needs to be purchased and discussed prior to the fabrication of the oven. Customer is responsible for tying into all three CIP zones, product shower port, steam, water, and air locations. All incoming control water and air will be required to be filtered to manufacturers' recommendations. If natural gas or propane is required, the Customer is responsible for the correct plumbing to the burner or control valve bank and the proper purging of the gas lines to the closest valve to the burner per NFPA requirements.
- Piping and Pipe Covering - Furnish piping mains and run-outs with required inline filtering or strainer assemblies, and make final connections to above systems, including any condensate piping and pneumatic control components. Furnish insulation for water and steam lines, as required.
- Electrical work - Make all line side electrical connections to Fusion Tech's temperature control panel and various remote controller(s) components (motors, valves, etc.) on top of oven. Customer is responsible for tying into main control panel with a high voltage (480V / 3ph) and a low voltage (120V / 1ph) line. Some smoke generators may require an external power source and control signal between main panel and generator which will be supplied by the Customer. Note: Conduit penetrations provided by the Customer into the top of electrical boxes provided by Fusion Tech will void all warranties of electrical components.
- Communication - Communication cable between oven output and Customer's network or pc will be supplied by the Customer.
- Temporary services - Furnish temporary power, 460/3/60 phase for welding machines, heat, and 120/1/60 phase service for lights for installation, testing, and adjusting of equipment.
- Access - Ensure that Fusion Tech's equipment has free and uninterrupted access to Customer's premises for all purposes relating to this job.
- Passivation treatment – If desired, furnish all necessary materials and labor required to complete the passivation process prior to product loading. It may be to your benefit to consult your operation manual and cleaning chemical supplier. (Typically only done on large continuous systems that have cooking and chilling all within one cabinet).
- On site dumpsters - Customer to provide the necessary dumpsters at the job site for disposal of crating materials and other non-usable materials.
- Check-off sheet – Prior to Fusion Tech coming onsite to finalize the installation and to do employee training, a site check-off sheet will be filled out, initialed, and signed. Once this sheet is completed, then a mutually agreed upon date for final start-up will be determined.

CUSTOMER ACKNOWLEDGEMENTS. Customer acknowledges that it is responsible for the safe selection, unloading, handling, storage, use and disposal of the products. Customer warrants that it will:

- familiarize itself with, and follow recommendations contained in, product information supplied by Fusion Tech at any time;
- follow safe handling, use, selling, storage, transportation and disposal practices and ensure that all employees, contractors, agents and customers follow these practices;
- take action to avoid spills or other dangers to persons, property or the environment, and in the event of such occurrence, take immediate action, at its own expense, to abate or otherwise address the spill or other danger;
- without limiting any other terms hereunder, indemnify Fusion Tech against any claim, loss, liability and expense (including reasonable attorney fees) on account of any damage to property or injury or death of persons (including without limitation Customer's employees and other personnel) arising out of Customer's unloading, handling, storage, use, sale or disposal of the products or the failure of Customer to comply with any of the obligations set forth in these Terms and Conditions;
- in any action against Fusion Tech for personal injury or death of Customer's employees, expressly waive, as to Fusion Tech, the exclusive defense under any Workers Compensation Act if Customer fails to comply with any of the obligations set forth in these Terms and Conditions; and
- comply with all federal, state, and local laws, rules and regulations concerning the transportation, storage, use, sale and disposal of products including all safety and environmental laws, rules and regulations.

CUSTOMER WARRANTY AND OBLIGATIONS. Customer warrants that it has received and is familiar with product information published by Fusion Tech, that it has used its own independent skill and expertise in connection with the design, selection and use of the products and that it possesses skill and expertise in the handling, storage, transportation, treatment, use and disposal of the products. To the extent Customer requires Fusion Tech, and Fusion Tech agrees, to affix or provide Customer's label to products ordered, Customer warrants that said label is accurate for the product ordered. Customer shall determine the suitability of the products for their purpose and assume the responsibility for all risks and liabilities which may result from their use.

PAYMENT. Customer will pay for the products and services on the terms set forth in a Separate Agreement, a Fusion Tech quotation or proposal, a purchase order submitted by Customer and accepted by Fusion Tech, or a Fusion Tech acknowledgement, bill of lading or invoice, as applicable. If payment terms are not set forth in any such document, payment must be received by Fusion Tech net 30 days from invoice date. Unless otherwise agreed in writing by Fusion Tech and Customer, Fusion Tech will invoice Customer upon shipment of products or commencement of services. All payments shall be made in the currency listed in any such document, as applicable, or, if not so listed, then in U.S. dollars. All balances not paid within 45 days of when due 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. If payments are not paid on time, or if Fusion Tech has reason to believe that Customer's financial status is unsatisfactory, Fusion Tech may defer shipments, accelerate due dates on all amounts owed, and/or require cash or other security. Customer agrees to pay all of Fusion Tech's collection costs (including reasonable attorney fees) incurred as a result of Customer's failure to make payment in accordance with applicable payment terms.

DELIVERY. Unless otherwise stated in a Separate Agreement, a Fusion Tech quotation or proposal, a purchase order submitted by Customer and accepted by Fusion Tech, or a Fusion Tech acknowledgement, bill of lading or invoice, as applicable, (i) all products will be delivered to Customer EX Works the manufacturing facility of the products (the "Facility"); and (ii) the provisions of the most current version of INCOTERMS, International Chamber of Commerce Publication, are incorporated herein by reference. Fusion Tech shall use reasonable efforts to meet Customer's requested delivery date, but Fusion Tech does not guarantee a specific delivery date. For international shipments, Fusion Tech may, in its sole discretion, agree to clear goods for export, provided that all related fees will be charged to the Customer. In the case of international sales, unless otherwise agreed by Fusion Tech, Customer shall be solely responsible for: (i) providing to Fusion Tech, prior to shipment and in writing, the ultimate destination and identity of the end-user; (ii) paying all duties, taxes and other charges imposed by any government on products or on the purchase, exportation, importation or re-exportation of products; and (iii) for compliance with all applicable laws, including but not limited to export control laws, and applicable regulations which may be issued from time to time concerning the exporting, importing and re-exporting of products. In addition, for U.S. export licensing purposes, Customer shall provide to Fusion Tech any and all documentation required to complete any and all applicable United States of America State Department or Commerce Department license applications.

TITLE; RISK OF LOSS. Title to the products shipped hereunder and the risk of loss shall pass to Customer upon Fusion Tech's delivery to a carrier or into Customer's transport.

RIGHT TO INSPECT; NOTICE OF REJECTION. Customer shall have the right to inspect the products upon tender by Fusion Tech or the carrier. The failure of Customer to inspect any particular shipment within thirty (30) days after tender to Customer shall constitute a waiver of Customer's rights to inspect that shipment and shall constitute an acceptance of such products. All claims for shortages, defects or other non-conformities in products delivered shall be made in writing by Customer to Fusion Tech within thirty (30) days after their tender to Customer and shall fully specify the nature of such claims and the basis thereof. Failure to so notify Fusion Tech in writing of any claim within thirty (30) days after tender to Customer shall constitute an irrevocable acceptance of the products and an admission by Customer that the products comply fully with all terms, conditions and specifications of the corresponding order.

If Customer rejects any products tendered, Customer shall fully specify the nature and basis of all claimed defects and other non-conformities in the notice of rejection sent to Fusion Tech within such thirty (30) day period. The failure to specify any particular defect or other non-conformity shall constitute a waiver by Customer of that defect or other non-conformity. If Customer rejects any tender of products in accordance herewith, Customer shall reship the products within a reasonable period of time to the place designated by Fusion Tech; provided, however, in no event are products to be returned by Customer without in each instance obtaining Fusion Tech's prior written authorization, and Fusion Tech reserves the right to refuse any products returned for credit without such prior written authorization. Customer expressly waives its right to a security interest in the products under Section 2-711 of the Uniform Commercial Code or under any other law.

Upon Customer's rejection of defective or non-conforming products and Fusion Tech's written authorization to return such products, in each case in accordance herewith, Fusion Tech shall, at Fusion Tech's sole option and as Customer's sole and exclusive remedy, either (i) repair the defective or non-conforming products, (ii) replace the defective or non-conforming products, or (iii) provide to Customer a refund or credit in the amount of the purchase price paid by Customer for the defective or non-conforming products. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Fusion Tech is willing and able to replace defective or non-conforming products in the prescribed manner.

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

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

CANCELLATION: The products and services covered by this order are being made expressly for Customer, and an order cannot be cancelled or modified except upon a basis that will assure Fusion Tech against loss and upon Fusion Tech accepting such cancellation in writing.

DESIGNS AND SPECIFICATIONS FOR GOODS: All products to be manufactured by Fusion Tech are manufactured to the designs and specifications of Customer. FUSION TECH'S WARRANTY SHALL NOT INCLUDE DEFECTS RESULTING FROM BUYER'S DESIGNS AND SPECIFICATIONS AND BUYER SHALL HOLD FUSION TECH HARMLESS AGAINST ANY EXPENSE OR LOSS, INCLUDING ATTORNEYS' FEES, RESULTING FROM DEFECTS IN THE GOODS CAUSED BY BUYER'S DESIGNS AND SPECIFICATIONS.

PATENTS, COPYRIGHTS AND TRADEMARKS: Customer shall hold Fusion Tech 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 Customer's designs or specifications or instructions. Customer shall be exclusively responsible for and shall, at Customer's expense, indemnify and defend Fusion Tech 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 Customer may order incorporated in or imprinted or placed on the goods, notwithstanding that Fusion Tech 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 Fusion Tech as set forth in the Warranty paragraphs.

WARRANTY AND LIMITATION OF WARRANTIES: Fusion Tech guarantees that its manufacture of the products shall meet agreed designs and specifications. THE PRODUCTS MAY CONTAIN THIRD-PARTY GOODS NOT MANUFACTURED BY FUSION TECH AND FUSION TECH MAKES NO WARRANTIES EITHER EXPRESSED OR IMPLIED WITH REGARD TO SUCH THIRD-PARTY GOODS; BUYER'S RECOURSE SHALL BE SOLELY AGAINST THE MANUFACTURER OF SUCH THIRD-PARTY GOODS. CUSTOMER ACKNOWLEDGES AND AGREES THAT EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, FUSION TECH MAKES NO REPRESENTATIONS OR WARRANTIES RELATED TO THE PRODUCTS OR THE SERVICES AND THAT THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

LIMITATION OF LIABILITY. THE LIABILITY OF FUSION TECH ON ANY CLAIM, INCLUDING THOSE FOR DEFECTIVE MATERIALS AND WORKMANSHIP, IS LIMITED TO REFUND OF PURCHASE PRICE OF PRODUCTS OR REPLACEMENT OF DEFECTIVE MATERIALS OR SUCH COMBINATION AS FUSION TECH MAY ELECT. FUSION TECH WILL NOT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS OR REVENUES, WHETHER ARISING UNDER WARRANTY/GUARANTY, CONTRACT, NEGLIGENCE (INCLUDING NEGLIGENT MISREPRESENTATION), STRICT LIABILITY, INDEMNIFICATION, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES, INCLUDING ANY THEORIES OF CONCURRENT LIABILITY ARISING FROM A DUTY OF CARE BY OPERATION OF LAW OR OTHERWISE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FUNDAMENTAL BREACH OR FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. CUSTOMER'S REMEDIES ARE LIMITED TO THOSE REMEDIES STATED HEREIN AND THESE REMEDIES SHALL NOT FAIL THEIR ESSENTIAL PURPOSE BECAUSE CUSTOMER IS LIMITED TO THE EXCLUSIVE REMEDIES AS STATED HEREIN.

GUARANTY: In the event Customer 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 Fusion Tech to extend credit to Customer, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby unconditionally and irrevocably personally guarantees the prompt payment to Fusion Tech of the purchase price for all Fusion Tech's products purchased from Fusion Tech and all other amounts payable under the terms and conditions as set forth above.

CREDIT CHECK: Customer authorizes Fusion Tech and its agents to verify the information provided in the Credit Application, to obtain credit information regarding Customer 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 Customer hereunder, and to investigate, at Fusion Tech's sole discretion, the trade and bank references listed above with respect to Customer's financial responsibility and creditworthiness.

ASSIGNABILITY. These Terms and Conditions shall bind the successors and assigns of the parties hereto at the option of Fusion Tech. The rights and duties hereunder are not assignable or transferable by Customer, in whole or in part, by operation of law or otherwise, without the prior written consent of Fusion Tech that may be granted or withheld in its sole discretion. Any assignment or attempted assignment in contravention of the foregoing shall be null and void, shall be considered a breach of these Terms and Conditions and shall permit Fusion Tech, in addition to any other rights which it may have, to terminate the contract between Fusion Tech and Customer. Fusion Tech shall have the right to assign any rights or obligations hereunder to any third party.

TAX AND OTHER CHARGES. Unless otherwise stated in a Separate Agreement, a Fusion Tech quotation or proposal, a purchase order submitted by Customer and accepted by Fusion Tech, or a Fusion Tech acknowledgement, bill of lading or invoice, as applicable, Fusion Tech's price does not include: (a) transportation, handling, crating or packaging charges, or (b) sales, harmonized sales, goods and services, use or value-added tax or any other tax, excises, duties, tariffs, fees or other governmental charges that Fusion Tech may be required to pay or collect under any existing or future law, with respect to the import/export, sale, transportation, delivery or storage of any products or the provision of any services sold by Fusion Tech. Any tax or governmental charge or increase in the same hereafter becoming effective increasing the cost to Fusion Tech of producing, selling, or delivering the products or of procuring materials used therein, and any tax now in effect or increase in same payable by Fusion Tech because of this sale, such as Sales Tax, Use Tax, Retailer's Occupational Tax, Gross Receipts Tax, may at Fusion Tech's option, be added to the price herein specified.

SEVERABILITY. If any provision of these Terms and Conditions is held invalid, such invalidity shall not affect other provisions or applications of these Terms and Conditions.

ENTIRE AGREEMENT. These Terms and Conditions, along with the applicable Separate Agreement, Fusion Tech quotation or proposal, purchase order submitted by Customer and accepted by Fusion Tech, and/or Fusion Tech acknowledgement, bill of lading or invoice, constitutes the complete and exclusive agreement between Fusion Tech and Customer concerning the products or services sold hereunder. Any additional or different terms are objected to and shall not be binding unless expressly agreed to by Fusion Tech in writing.

LAW GOVERNING; JURISDICTION AND VENUE. The terms hereof shall be governed by and construed in accordance with laws of the State of Illinois. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. WITH RESPECT TO ANY DISPUTE, CONTROVERSY, OR CLAIM ARISING FROM THE SALE OF PRODUCTS OR SERVICES BY FUSION TECH TO CUSTOMER, FUSION TECH AND CUSTOMER IRREVOCABLY AGREE THAT JURISDICTION AND VENUE IN ANY SUCH DISPUTE, CONTROVERSY, OR CLAIM SHALL PROPERLY AND EXCLUSIVELY LIE IN THE CIRCUIT COURT FOR PEORIA COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS, AND FUSION TECH AND CUSTOMER IRREVOCABLY AGREE THAT VENUE WOULD BE PROPER IN SUCH COURT AND HEREBY WAIVE ANY OBJECTION THAT SUCH COURT IS AN IMPROPER OR INCONVENIENT FORUM FOR THE RESOLUTION OF SUCH ACTION.

EXPORTING OF GOODS. Customer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States, Canada and the European Union, and any jurisdictions in which Fusion Tech and Customer are established or from which products and services may be supplied, will apply to their receipt and use. In no event shall Customer use, transfer, release, import, export, goods in violation of such applicable laws, regulations, orders or requirements.

INDEPENDENT CONTRACTORS. Fusion Tech and Customer are independent contractors only and are not partners, master/servant, principal/agent or involved herein as parties to any other similar legal relationship with respect to the transactions contemplated hereunder or otherwise, and no fiduciary, trust, or advisor relationship, nor any other relationship imposing vicarious liability shall exist between the parties under these Terms and Conditions or otherwise at law.

ATTORNEYS' FEES. IN CONNECTION WITH ANY LITIGATION ARISING FROM THE SALE OF PRODUCTS OR SERVICES BY FUSION TECH TO CUSTOMER, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER ITS REASONABLE ATTORNEYS' FEES AND EXPENSES FROM THE NON-PREVAILING PARTY AS PART OF THE SAME LITIGATION; PROVIDED, HOWEVER, IF A PARTY PREVAILS ON SOME, BUT NOT ALL, OF ITS CLAIMS, SUCH PARTY SHALL BE ENTITLED TO RECOVER AN EQUITABLE AMOUNT OF SUCH FEES, COSTS AND EXPENSES, AS DETERMINED BY THE APPLICABLE COURT COMMENSURATE WITH ITS DEGREE OF SUCCESS AGAINST THE NON-PREVAILING PARTY.

FORCE MAJEURE. Force Majeure means any circumstances beyond the reasonable control of either party, including without limitation fire, explosion, breakdown of machinery or equipment, plant shutdown, strikes or other labor disputes, acts of terrorism or war, riots or other civil disturbances or voluntary or involuntary compliance with any law, order regulation, recommendation or request of any governmental authority, inability to obtain materials necessary for manufacturer of the products, total or partial failure of any of Fusion Tech's usual means of transportation of the products, or for failure to obtain necessary governmental approvals, permits or licenses. Neither party will have any liability, other than for the payment of monies owing, for their failure to perform any of their contractual obligations arising out of or in connection with events of Force Majeure.

WAIVER. The failure by Fusion Tech at any time to enforce any of the provisions of these Terms and Conditions, or to require performance by Customer of any of the provisions of these Terms and Conditions, shall in no way be construed to be a waiver of such provisions or to affect either the validity of these Terms and Conditions or any part hereof, or the right of Fusion Tech thereafter to enforce each and every provision in accordance with these Terms and Conditions.