

**FISCHER TECHNOLOGY INC.  
TERMS AND CONDITIONS**

1. Offer and Acceptance:
  - (a) These terms and conditions of sale (these "Terms") are the only terms which govern the sale of the goods ("Goods") by the seller named on the reverse side of these Terms ("Seller") to the purchase of said Goods ("Buyer"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
  - (b) The accompanying invoice (the "Sales Confirmation," collectively with these Terms, the "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.
  - (c) All provisions and prices are subject to change after thirty (30) days from the date of this Sales Confirmation. Buyer's acceptance of the Goods sold hereunder shall constitute Buyer's acceptance of this Agreement.
2. Price: Buyer shall purchase the Goods from Seller at the prices (the "Prices") set forth in Seller's published price list in force as of the date that Seller accepts Buyer's purchase order. If the Prices should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased prices were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased prices. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.
3. Shipment: Seller shall ship all Goods F.O.B. (as defined in the Connecticut Uniform Commercial Code) Seller's facility in Windsor, Connecticut (the "Delivery Point").
4. Payment; Failure to Make Payment or Accept Deliveries:
  - (a) Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller's Sales Confirmation. Buyer shall make all payments hereunder by wire transfer, check or credit card and in US dollars.
  - (b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.0% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including reasonable attorneys' fees.
  - (c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach or otherwise.
  - (d) Buyer's failure to make any payment in accordance with this Agreement, or to accept delivery of Seller's Goods in accordance with Seller's shipping schedules, shall constitute a breach of this Agreement and any other contract that may be entered into between Seller and Buyer. Upon such breach, Seller may (i) suspend deliveries of Goods until it receives Buyer's payment, and/or (ii) Seller may terminate this Agreement. As a result of any failure of Buyer described in this Section 4(d), Buyer shall be liable to Seller for all damages, losses and liabilities, including without limitation consequential and special damages. In addition to any other damages and remedies set forth herein, in the event that Buyer fails to take delivery of Goods specifically fabricated for Buyer, Buyer shall pay Seller the full purchase price for such Goods, whether such Goods were accepted by Buyer or not.
5. Delivery: Quoted delivery dates are Seller's best estimates. Seller shall not be liable for any delay in delivery or failure to deliver resulting from circumstances beyond Seller's control. Buyer's acceptance of delivery shall constitute a waiver of any claim against Seller for delay. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.
6. WARRANTY AND REMEDY:
  - (a) SELLER WARRANTS THAT THE GOODS SOLD HEREUNDER SHALL BE FREE OF DEFECTS IN MATERIAL AND WORKMANSHIP FOR ONE (1) YEAR FROM THE DATE OF SHIPMENT, EXCEPT FOR PROBES WHICH THE SELLER WARRANTS FOR SIX MONTHS FROM THE DATE OF SHIPMENT, UNLESS OTHERWISE NOTED. THIS WARRANTY IS SELLER'S SOLE OBLIGATION WITH RESPECT TO THE GOODS. EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION 6(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
  - (b) SELLER FURTHER DISCLAIMS ANY AND ALL RESPONSIBILITY TO BUYER OR TO ANY OTHER PERSON FOR INJURY OR DAMAGE TO OR LOSS OF PROPERTY OR VALUE CAUSED BY ANY GOOD THAT HAS BEEN SUBJECTED TO MISUSE, NEGLIGENCE, OR ACCIDENT, OR HAS BEEN MISAPPLIED, MODIFIED, OR REPAIRED BY A PERSON OR PERSONS NOT AUTHORIZED BY SELLER, OR HAS BEEN IMPROPERLY INSTALLED.
  - (c) Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 11.(a). For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
  - (d) The Seller shall not be liable for a breach of the warranty set forth in Section 6(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within thirty (30) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.
  - (e) The Seller shall not be liable for a breach of the warranty set forth in Section 6(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.
  - (f) Subject to Section 6(d) and Section 6(e) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller at Seller's Windsor, Connecticut plant or Seller's designated repair facility. Regardless of whether Seller has undertaken responsibility for the cost of shipping the Goods for purposes of a warranty claim or a repair warranty as set forth in Section 7 hereof; prior to such shipment, Buyer shall contact Seller to determine whether any special packaging is required for shipment. Buyer's failure to obtain such determination from Seller, or having obtained such determination, Buyer's failure to follow Seller's instructions, shall limit or eliminate Seller's warranty obligations to the extent improper packaging caused or could reasonably be deemed to have caused damage to the Goods.
7. Repair Warranty: Seller warrants from defects, for thirty (30) days after the repair invoice date, repairs which it or its designated repair facility has made. Seller will pay reasonable charges incurred in shipping to and from Seller's Windsor, Connecticut plant or Seller's designated repair facility Goods for which Buyer has filed and Seller has accepted a repair warranty claim within thirty (30) days after the repair invoice date. THIS REPAIR WARRANTY IS SUBJECT TO THE LIMITATIONS SET FORTH IN PARAGRAPH 6 OF THIS INVOICE.
8. Inspection:
  - (a) Buyer shall inspect the Goods within thirty (30) days of receipt (the "Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "Nonconforming Goods" means only the following: (i) Good shipped is different than identified in Buyer's purchase order; or (ii) Good's label or packaging incorrectly identifies its contents.
  - (b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility located at Windsor, Connecticut. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.
  - (c) Buyer acknowledges and agrees that the remedies set forth in Section 8.(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8.(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.
9. Limitation of Liability:
  - (a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, PROFIT, LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
  - (b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER. Limitations of Actions: Buyer may not commence any action arising out of this invoice more than one year after the cause of action has accrued.
10. Infringement of Intellectual Property Rights: Seller makes no warranty that the Goods sold hereunder will be delivered free of the rightful infringement claim of any third party. If the Goods sold hereunder are to be furnished to Buyer's specification, Buyer agrees to defend, indemnify and hold harmless Seller and its successors and assigns against all liabilities and expenses, including attorney's fees, resulting from any claim of infringement of any patent, copyright, trade secret, trademark or other intellectual property right in connection with the production, sale, or use of such Goods.
11. Packing: Seller will charge Buyer for any packaging other than Seller's standard packaging and commercial container.
12. Indemnification for Co-Packaging of Goods: If Buyer combines the Goods sold hereunder with other parts for resale, Buyer shall defend and indemnify Seller against and hold Seller harmless from all losses, costs, and expenses, including attorney fees, resulting from claims that are based on such combination.
13. Changes by Buyer: Seller may adjust prices in the event Buyer changes the specifications, quantities, or delivery requirements after Seller's acknowledgement of Buyer's order. All warranties, limitations of liability, disclaimers, and indemnity agreements as contained in Paragraphs 6, 8, and 13 herein, together with all other paragraphs hereof; shall apply with respect to all Goods affected by any such change and no modification or rescission of any such warranty, limitation of liability for damages, disclaimers, or indemnify agreement shall be binding on Seller unless contained in an express writing to the effect signed by Seller.
14. Cancellation: Buyer may cancel this order, in whole or in part, upon written notice to Seller and upon payment of a cancellation charge, which shall be the sum of (a) the purchase price of all Goods that have been delivered and not previously paid for, plus (b) the actual cost incurred by Seller that is properly allocable to the Goods not delivered at the time of notice of cancellation, including, without limitation, the cost of special components and materials purchased for use in producing such Goods, plus (c) the profits, including reasonable overhead, that Seller would have made from full performance by Buyer, plus (d) the costs of engineering prototypes, testing, tooling, and similar items produced for Buyer, plus (e) the reasonable costs incurred by Seller in reaching settlement and affecting collection hereunder. Buyer may require delivery of any material for which payment is made.
15. Assignment and Transfer: Buyer shall not assign or transfer this Agreement without Seller's prior written approval.
16. Title and Risk of Loss: Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Connecticut Uniform Commercial Code.
17. Information: Buyer shall assert no claim, other than a claim for patent infringement, against Seller with respect to any information that Buyer may have disclosed or may hereafter disclose to Seller in connection with the Goods to be provided hereunder. All such disclosures shall be nonconfidential and free from all restrictions except those provided under any applicable patent laws.
18. Law and Jurisdiction:
  - (a) All matters arising out of or relating to this Agreement are governed by and shall be construed in accordance with the internal laws of the State of Connecticut without giving effect to any choice or conflict of law provision or rule (whether of the State of Connecticut or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Connecticut.
  - (b) Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Connecticut in each case located in the City of Hartford and County of Hartford, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
19. Return and Restocking: A return goods authorization must be requested within fifteen (15) days of the delivery date. Goods must be returned in like new condition. Returns are subject to a 10% restocking fee. Restocking fees will be deducted from the refund amount issued.
20. Force Majeure: Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.
21. Relationship of the Parties: The relationship between the parties is that of independent contractors. Nothing contained in this Agreement 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.
22. No Third-Party Beneficiaries: This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
23. Waiver: No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
24. Compliance with Law: Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.
25. 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 the Sales Confirmation 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 Agreement, 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.
26. Severability: If any term or provision of this Agreement 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.
27. Survival: Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.