



1. Terms and Conditions – These Terms and Conditions apply to any agreement between Vendor and Purchaser as identified in any Purchase Obligation (defined below), contract or agreement between Vendor and the Purchaser. No waiver, alteration or modification of, or additions to the terms and conditions contained herein and/or in any Purchase Obligation shall be binding upon Vendor unless expressly agreed to in writing by a duly authorized representative of Vendor.
2. Definitions – when used herein: (i) “Vendor” means Fast Fusion, LLC; (ii) “Purchaser” means a person, firm or corporation acquiring Goods from Vendor; (iii) “Goods” means fusion machines, equipment, parts, materials, or services provided by Vendor, including, without limitation, those described on any Purchase Obligation; (iv) “Quote” means a document listing, among other things, Goods to be purchased by a Purchaser, and includes the price, terms and conditions of such purchase; and (v) “Purchase Obligation” means a Quote that has been accepted by a Purchaser as evidenced by Purchaser’s signature on the Quote.
3. Acceptance – A Quote will be deemed accepted and will become a Purchase Obligation upon execution by Purchaser. Such acceptance shall be deemed to constitute Purchaser’s acceptance of and agreement to be bound by the terms of the Purchase Obligation, and these Terms and Conditions.
4. Price - Unless otherwise specified, the price of Goods or services ordered will be the prices reflected on the Purchase Obligation in question. Unless the Purchase Obligation in question expressly provides otherwise Vendor’s prices do not include freight or shipping charges, or goods and services, sales, use, or other taxes. Freight and shipping charges will be billed separately to Purchaser. Likewise, all taxes shall be billed separately to Purchaser, unless Purchaser provides Vendor with a valid tax exemption certificate acceptable to Vendor and the appropriate taxing authorities.
5. Delivery – Terms of Delivery will be EXW Vendor’s Manufacturer, unless otherwise specified on the Purchase Obligation in questions. It is expressly agreed that time is not of the essence. Accordingly, delivery completion dates, if shown on a Purchase Obligation, are approximate from the date of receipt of a Purchase Obligation according to the terms herein contained, including full information received at the Vendor’s office. In case of delay by Purchaser in furnishing complete information, delivery/completion dates may be extended for a reasonable time depending on factory and manpower conditions. Vendor shall not be responsible for reasonable or Excusable Delays, nor shall Purchaser refuse to accept delivery because of such Excusable Delays. “Excusable Delays” include, without limitation, delays resulting from accidents, acts of God, strikes or other labor difficulties, government controls, or other forms of intervention, inability to obtain labor, materials, utilities or services, or other causes beyond Vendor’s control. Availability of Goods is subject to prior sale.
6. Warranty –
 - A. Vendor warrants that all Goods manufactured, sold and/or repaired by Vendor will meet the Vendor’s written specifications and will be free from defects in materials and workmanship. Vendor’s obligation under this warranty shall be limited to repairing or replacing any Goods, or components or parts thereof, found by Vendor to be defective and for which Vendor has received written notice within three (3) years after the date of shipment, with the exception of items manufactured by anyone other than Vendor, such as electronic devices, pumps, switches, etc., which are warranted only by and to the extent of the original manufacturer’s warranty to Vendor and are not warranted by Vendor. This warranty does not apply to any Goods or component parts thereof which have been repaired or altered by anyone other than





Vendor, or that have become damaged due to neglect, misuse or negligence, or that have not been operated or maintained according to Vendor's printed instructions and/or warnings, whether such instruction and/or warnings are provided with the Goods or services in question or made available to Purchaser on Vendor's website at www.fastfusion.com. This warranty is expressly in lieu of all other warranties, expressed or implied. The remedies hereunder are the exclusive and sole remedies available to Purchaser, and all claims for damages of any kind or nature shall at all times and under all circumstances be subject to the provisions of paragraph 8 below. Purchaser waives the benefit of any rule that the disclaimer of warranty shall be construed against Vendor and agrees that such disclaimers herein shall be construed liberally in favor of Vendor.

B. Once Vendor determines that Goods or component parts thereof are covered by the Vendor's warranty, Vendor shall replace or repair the Goods or component parts thereof in question subject to the following:

1. Transportation charges incurred in conjunction with the return of Goods or component parts thereof for repair or replacement under the foregoing warranty ("Transportation Charges") are the sole responsibility of the Purchaser unless stated differently in the Vendor's warranty policy; and
2. Goods or component parts thereof shall not be returned under the foregoing warranty unless and until the Purchaser obtains from Vendor a Return Merchandise Authorization ("RMA"), which RMA shall: (a) identify the location to which the Goods or component parts thereof shall be returned; and (b) identify the transportation method to be used to return the Goods or component parts thereof, which transportation method shall be determined by Vendor in its sole discretion; and
3. Under no circumstances will Vendor be responsible for or pay: (a) any costs or expenses associated with expediting repair or replacement of the Goods or component parts; or (b) import fees or expenses; or (c) goods and services, sales, use or other taxes; or (d) any other costs, fees or expenses over and above the Transportation Charges associated with Vendor's transportation method identified in the RMA for which Vendor is obligated to pay under Vendor's warranty policy, if any.

7. **Governing Laws; Disputes – Interpretation of these Terms and Conditions, including the definitions contained herein, and the rights of parties arising out of these Terms and Conditions or the accompanying Purchase Obligation, shall be construed under the laws of the State of Colorado, U.S.A. All disputes between the Vendor and Purchaser will be resolved exclusively in the State of Colorado by either arbitration or court action at the option of Vendor. Should Vendor retain counsel to resolve a payment dispute or any other dispute between the Vendor and Purchaser, Purchaser shall pay Vendor's attorney fees, costs and other expenses associated with the dispute.**

8. **Damages – In no event shall Vendor be liable for special, consequential, or incidental damages including, but not limited to, loss of anticipated profits or loss of any equipment, installation, system, operation or service into which the Goods or any equipment, parts or materials may be put or the services performed. This limitation on Vendor's liability shall apply to any liabilities for default under or in connection with the Goods and services delivered under any Purchase Obligation whether based on warranty, failure of or delay in delivery or otherwise. Any action seeking damages (other than Warranty claims under Section 6 above), including for breach of contract and any other cause of action must be commenced within one (1) year after the date of delivery to Purchaser.**

9. **Payment Terms –**

A. Unless Purchaser and Vendor agree otherwise in writing, at the time the Purchase Obligation is placed by Purchaser with Vendor, 50% of the total invoice amount is due to the Vendor. The remaining 50% of the total invoice amount is due upon the date the Vendor notifies the Purchaser that the Goods are ready for shipment.





B. Should actual shipment of Goods not be made for non-payment or for any other reason not the fault of Vendor, the Goods will be shipped in place and Purchaser agrees to pay Vendor a storage fee in the amount of \$500.00 per day from the date the Goods are shipped in place until the Purchaser removes the Goods from storage.

C. Any payment of an invoice not received when due shall bear interest thereon at the rate of one and one half percent (1-1/2 %) per month on the unpaid balance until paid in full.

10. Title to Goods; Security Interest – By accepting delivery of any Goods, and until such time as all sums due and owing to Vendor for such Goods are paid in full, Purchaser shall be deemed to and hereby does transfer, assign and grant to Vendor a security interest in such Goods, and further agrees that Purchaser will, at its expense, take or cause to be taken such action and will execute and deliver or cause to be executed and delivered such other agreements and documents which Vendor may from time to time request for the purpose of protecting, enforcing, perfecting and maintaining Vendor's security interest in such Goods and its rights under these Terms and Conditions, including, without limitation, placing on such Goods labels or plates as specified by Vendor advising of Vendor's security interest in such Goods, and executing and filing financing and other statements under the Uniform Commercial Code (or similar provision of law) in any jurisdiction. Purchaser further authorizes Vendor to sign and file any such statement on its behalf or to file any such statement without its signature. Any of the following shall constitute an Event of Default: (i) failure by Purchaser to pay any amount due and owing by Purchaser for the Goods when due, (ii) failure by Purchaser to perform any of its other obligations under any agreement between Purchaser and Vendor in accordance with the terms of such agreement, or (iii) the occurrence of any other default under any agreement between Purchaser and Vendor. Upon the occurrence of an Event of Default, Vendor will have the rights, options, duties and remedies of a secured party, and Purchaser will have the rights and duties of a debtor, under the Uniform Commercial Code (regardless of whether such Code or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted) and, without limiting the foregoing, Vendor may exercise one or more of the following remedies: (a) declare the entire unpaid sum then due and owing by Purchaser to Vendor or such lesser amount as may be set by law immediately due and payable with respect to any or all Goods without notice or demand to Purchaser; (b) sue from time to time for and recover all installment payments and other payments then accrued and which accrue during the pendency of such action with respect to any or all Goods; (c) take possession of and, if deemed appropriate, render unusable any or all Goods, without demand or notice, wherever same may be located, without any court order or other process of law and without liability for any damages occasioned by such taking of possession and remove, keep and store the same or use and operate or lease the same until sold; (d) require Purchaser to assemble any or all Goods at any location designated by Vendor; (e) upon ten (10) days notice to Purchaser or such other notice as may be required by law, sell or otherwise dispose of any Goods, whether or not in Vendor's possession, in a commercially reasonable manner at public or private sale at any place deemed appropriate and apply the proceeds of such sale, after deducting all costs of such sale, including, but not limited to, legal fees, costs of transportation, repossession, storage, refurbishing, advertising and brokers' fees, to the obligations of Purchaser to Vendor, with Purchaser remaining liable for any deficiency and with any excess being returned to Purchaser; (f) upon thirty (30) days notice to Purchaser, retain any repossessed or assembled Goods as Vendor's own property in full satisfaction of Purchaser's liability for the installment payments due with respect thereto, provided that Purchaser will have the right to redeem such Goods by payment in full of its obligations to Vendor or to require Vendor to sell or otherwise dispose of such Goods in the manner set forth in subparagraph (e) hereinabove upon notice to Vendor within such thirty (30) day period; or (g) utilize any other remedy available to Vendor under the Uniform Commercial Code or similar provision of law or otherwise at law or in equity. No right or remedy conferred herein is exclusive of any other right or remedy conferred herein or by law; but all such remedies are cumulative of every other right or remedy conferred hereunder or at law or in equity, by statute or





otherwise, and may be exercised concurrently or separately from time to time. Any sale contemplated by subparagraph (e) above may be adjourned from time to time by announcement at the time and place appointed for such sale, or for any such adjourned sale, without further published notice, Vendor may bid and become the purchaser at any such sale. Any sale of any Goods, whether under said subparagraph or by virtue of judicial proceedings, will operate to divest all right, title, interest, claim and demand whatsoever; either at law or in equity, of Purchaser in and to said Goods and will be a perpetual bar to any claim against such Goods, both at law and in equity, by Purchaser and all persons claiming by, through or under Purchaser. Vendor will release its security interest in such Goods when Purchaser has paid to Vendor all sums due and owing for such Goods and Purchaser has otherwise satisfied all obligations to Vendor related thereto.

11. Use of Vendor's Name and other Marks – Vendor reserves all rights with respect to its name and all trademarks, service marks, logos, trade names, trade dress and other indicia related to Vendor and/or the Goods (collectively the "Marks"), and must approve, in advance and in writing, any use thereof. Any unauthorized use of any Vendor-owned Mark, or any use of a mark that is confusingly similar to, or likely to cause confusion with, a Vendor-owned Mark, would constitute infringement of Vendor's exclusive trademark rights and is expressly prohibited. Likewise, use of Vendor's Marks within other companies' names, service names, company/trade names, DBA's, domain names or other indicia is strictly prohibited. Purchaser may, in some instances and with Vendor's advance written consent, make purely referential use of Vendor-owned Marks. Such referential uses of Vendor-owned Marks must only be made in plain text, and use of product logos or box designs is NOT allowed without a written license from Vendor. Plain text use of Vendor's Marks in commercial contexts may only be made for purposes like describing the Goods, or ability to train others on the use of the Goods, or true, factual statements as to the nature of any relationship with Vendor, where one exists. Any use of Vendor's Marks or of statements that imply endorsement, affiliation, certification or other relationship – where none exist – are strictly prohibited. Purchaser will not remove or destroy any tag, label, imprint, sign, banner, or other identifying information Vendor attaches to the Goods or component parts thereof, including but not limited to any patent or trademark notices, which tags, labels, imprints, signs and/or banners shall also comply with all applicable federal, state and/or local laws, standards and regulations. As a condition to approval of a proposed referential use of a Mark by Purchaser Vendor may require Purchaser to include the proper trademark symbol(s), and may further require Purchaser to provide a short ownership attribution statement indicating that the Mark in question is a trademark or service mark of Vendor.

12. Controlling terms – In the event of conflict between these Terms and Conditions and those of any Purchase Obligation or separate purchase order issued by Purchaser, these Terms and Conditions shall govern and Purchaser's terms and conditions shall be of no force and effect.

13. Engineering – Vendor's Goods are highly engineered and constantly subject to engineering refinement and improvement. Of necessity, therefore, Vendor reserves the right to change the affected part numbers and prices at any time without notice to Purchaser.

14. Cancellation and Returns – Unless Purchaser and Vendor agree otherwise in writing: (i) no Purchase Obligation may be cancelled or returned in whole or in part without Vendor's written consent, and payment of reasonable charges; (ii) any Goods returned to Vendor will be subject to a restocking charge not to exceed one hundred percent (100%) of the invoice price; (iii) transportation charges incurred in conjunction with the return of Goods or component parts thereof upon cancellation of a Purchase Obligation are the sole responsibility of the Purchaser; and (iv) credits for returned Goods will not be issued until such Goods have been received at Vendor's specified location, inspected and deemed resalable as in their original manufactured condition, and Vendor has determined, to its reasonable satisfaction, that all transportation charges associated with such return have been paid in full by Purchaser.





15. Protection of Intellectual Property –

A. Nondisclosure of Confidential Information. Understanding that in its acquisition, proper maintenance and use of the Goods, Purchaser shall acquire knowledge of Vendor’s proprietary and confidential information, including without limitation the design, specifications and operation of the Goods, and other information embodied therein or relating thereto, including ideas, inventions, technology, information, know-how, methods, processes, plans, and designs (the “Confidential Information”), and acknowledging that such information is a valuable asset of Vendor, Purchaser hereby covenants, agrees, represents and warrants that:

1. the Confidential Information, regardless of how it is conveyed (orally, in writing, electronically, or by visual inspection) is and shall at all times remain the sole and exclusive property of Vendor; and
2. the disclosure or use of the Confidential Information to or by anyone other than Purchaser, its officers, agents or authorized clients, all of whom are, or must agree in writing to be, bound by confidentiality obligations commensurate with those set forth in this Section 15. A., will cause Vendor irreparable injury; and
3. Purchaser understands that in order to protect Vendor’s business, competitive position and good will, that Purchaser must maintain and preserve all of the Confidential Information and knowledge from all of Vendor’s competitors and potential competitors, the pipe welding industry, and the general public; and
4. Purchaser acknowledges that Vendor derives a competitive advantage in the marketplace by maintaining the Confidential Information and knowledge of that information as secret and unavailable to Vendor’s competitors, the pipe welding industry, and/or to the general public; and
5. during the term of any agreement between Purchaser and Vendor, including, without limitation, any Purchase Obligation, and after termination or expiration thereof for any reason, with or without cause, Purchaser agrees to hold the Confidential Information as secret, and shall not, directly or indirectly, individually or in combination or association with any other person or entity, divulge or disclose to any third-party (or otherwise provide any third-party access to) any Confidential Information without, in each instance, the prior written consent of Vendor, except to the extent the Confidential Information must be disclosed per court order (provided that Vendor has timely received notice and had an opportunity to limit such disclosure); and
6. during the term of any agreement between Purchase and Vendor, including, without limitation, any Purchase Obligation, and after its termination or expiration for any reason, with or without cause, Purchaser agrees that it shall not, directly or indirectly, individually or in combination or association with any other person or entity, cause or permit the use, copying or summarizing of any Confidential Information for Purchaser’s benefit, or for the benefit of any entity or person other than Vendor, or to reverse engineer, disassemble, or otherwise obtain additional confidential information regarding the Goods or any other product of Vendor, except as may be necessary by Purchaser in the performance of its duties under any agreements between Vendor and Purchaser, including, without limitation, any Purchase Obligation.

B. Restriction Against Competition. Purchaser covenants and agrees that during the term of any agreement by and among Vendor and Purchaser, including, without limitation, any Purchase Obligation, and thereafter until the conclusion of the five-year period from the date of termination or expiration of all agreements and relationships between Vendor and Purchaser, for any reason, with or without cause:





1. Purchaser shall not interfere with the relationship between Vendor and any of its customers, prospective customers, employees, agents, dealers, representatives, manufacturers or suppliers; and
 2. Purchaser shall not, either directly or indirectly, solicit or induce, or attempt to solicit or induce, any current or future employee of Vendor to leave Vendor for any reason whatsoever; and
 3. Purchaser shall not, directly or indirectly, purchase, sell, manufacture, lease, or use any product or service in direct competition with any of the Goods, and parts or components thereof, that are not commercial off-the-shelf products, or any other related products of Vendor.
- C. **Limitations on Scope.** In the event that any of the restrictions and the limitations contained in this Section 15 are deemed to be unreasonable or to otherwise exceed the time, geographic and/or other limitations permitted by applicable law, such provisions shall be reformed to the maximum time and/or geographic limitations permitted by applicable law.
- D. **Remedies.** Purchaser acknowledges that the restrictions and the limitations contained in this Section 15 are reasonable and necessary in view of the nature of the parties' business in order to protect the legitimate business interests of Vendor. Purchaser further acknowledges that any violation of the restrictions and/or limitations would result in irreparable injury to Vendor. Therefore, Purchaser agrees that in the event of a breach or a threatened breach by Purchaser of the provisions of this Section 15, Vendor shall be entitled to obtain preliminary and permanent injunctive relief restraining Purchaser from any violation of any provision of this Section 15. Purchaser shall use its best efforts to enforce the obligations of employees, agents and third-parties who obtain access to the Confidential Information (rightly or wrongly) through Purchaser.
- E. **Effect of Termination and Expiration.** In the event of any termination or expiration of any agreement among Purchaser and Vendor, including, without limitation, any Purchase Obligation, this Section 15 shall survive said event and continue in full force and effect in accordance with its terms.
16. **Language** – Unless agreed upon otherwise in writing, all communications, documents, equipment labels, and execution of services shall be in the English language.
17. **Indemnity** – Purchaser covenants and agrees to defend, indemnify and hold harmless Vendor and its affiliates, successors, managers, members, officers, employees, distributors, agents and/or assigns from and against any and all claims, suits, demands, losses, liabilities, costs, damages and expenses, including reasonable attorneys' fees, experts' fees and court costs, suffered or incurred by any such party arising from or relating to the sale, lease, use and/or operation of Goods purchased by Purchaser from Vendor.

