

Fusion3 Terms of Sale - Direct
(Applies to all direct purchases-by internet or phone,)

PLEASE READ THIS DOCUMENT CAREFULLY! IT CONTAINS VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS. THESE TERMS REQUIRE THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS. IF YOU DO NOT AGREE WITH THESE TERMS, DO NOT ORDER/KEEP YOUR PRODUCT.

NOTE: These Fusion3 Terms of Sale apply to direct purchases made from Fusion3 by phone or the Internet

These Terms of Sale ("Agreement") apply to your purchase of products and/or services and support ("Product") sold in the United States by Fusion3, including its affiliates or subsidiaries. By placing your order for Product, you accept and are bound to the terms of this Agreement. If you have placed an order but do not wish to be subject to these Terms of Sale, you must promptly cancel your order via phone before it enters production and becomes non-cancellable or return your purchase in accordance with Fusion3's Return Policy (see: www.Fusion3.com/returnpolicy) within 21 days of the invoice date for a refund of your purchase price minus shipping, handling, and up to a 15% restocking fee.

- 1. Other Documents.** This Agreement may NOT be altered, supplemented, or amended by the use of any other document(s) unless otherwise agreed to in a written agreement signed by both you and Fusion3. If you do not receive an invoice or acknowledgement in the mail, via e-mail, or with your Product, information about your purchase may be obtained by contacting your sales representative.
- 2. Payment Terms; Orders; Quotes; Interest.** Terms of payment are within Fusion3's sole discretion, and unless otherwise agreed to by Fusion3, payment must be received by Fusion3 prior to Fusion3's acceptance of an order. Payment for the products will be made by credit card, wire transfer, purchase order or some other prearranged payment method unless credit terms have been agreed to by Fusion3. Invoices are due and payable within the time period noted on your invoice, measured from the date of the invoice. Fusion3 may invoice parts of an order separately. Your order is subject to cancellation by Fusion3, in Fusion3's sole discretion. Unless you and Fusion3 have agreed to a different discount, Fusion3's standard pricing policy for Fusion3-branded systems allocates the discount off list price applicable to the service portion of the system to be equal to the overall calculated percentage discount off list price on the entire system. Fusion3 is not responsible for pricing, typographical, or other errors in any offer

by Fusion3 and reserves the right to cancel any orders arising from such errors. Invoices must be paid within 30 days of the invoice date.

3. **Shipping Charges; Taxes; Title; Risk of Loss.** Shipping, handling and tax are additional unless otherwise expressly indicated at the time of sale. Title to products passes from Fusion3 to Customer upon shipment to Customer. Loss or damage that occurs during shipping by a carrier selected by Fusion3 is Fusion3's responsibility. Loss or damage that occurs during shipping by a carrier selected by you is your responsibility. You must notify Fusion3 within 21 days of the date of your invoice or acknowledgement if you believe any part of your purchase is missing, wrong or damaged. Unless you provide Fusion3 with a valid and correct tax exemption certificate applicable to your purchase of Product and the Product ship-to location, you are responsible for sales and other taxes associated with the order. Shipping and delivery dates are estimates only.
4. **Warranties.** THE LIMITED WARRANTIES APPLICABLE TO FUSION3-BRANDED HARDWARE PRODUCT CAN BE FOUND AT (www.fusion3design.com/warranty) OR IN THE DOCUMENTATION FUSION3 PROVIDES WITH FUSION3-BRANDED PRODUCT. FUSION3 MAKES NO OTHER WARRANTIES FOR FUSION3-BRANDED PRODUCT, AND MAKES NO WARRANTIES WHATSOEVER FOR SERVICE, SOFTWARE, MAINTENANCE OR SUPPORT OR FOR NON-FUSION3 BRANDED PRODUCT. SUCH PRODUCT, SOFTWARE, SERVICE, MAINTENANCE OR SUPPORT IS PROVIDED BY FUSION3 "AS IS" AND ANY THIRD-PARTY WARRANTIES, PRODUCTS, SOFTWARE, SERVICES, MAINTENANCE OR SUPPORT ARE PROVIDED BY THE ORIGINAL MANUFACTURER OR SUPPLIER, NOT BY FUSION3. SOME STATES DO NOT ALLOW LIMITATIONS OF IMPLIED WARRANTIES, SO THESE LIMITATIONS MAY NOT APPLY TO YOU. FUSION3 MAKES NO EXPRESS WARRANTIES EXCEPT THOSE STATED IN FUSION3'S APPLICABLE FUSION3-BRANDED WARRANTY IN EFFECT ON THE DATE OF THE INVOICE, PACKING SLIP OR ACKNOWLEDGEMENT. FUSION3-BRANDED WARRANTIES AND SERVICES ARE EFFECTIVE ON PAYMENT IN FULL, AND FUSION3 IS NOT OBLIGATED TO HONOR ANY WARRANTY OR PROVIDE SERVICE UNTIL FUSION3 RECEIVES PAYMENT IN FULL. FUSION3 MAY REQUEST CANCELLATION OF THIRD-PARTY-BRANDED SOFTWARE LICENSES, SERVICES, MAINTENANCE OR SUPPORT IF FUSION3 DOES NOT RECEIVE PAYMENT. IF YOU PURCHASE THIRD-PARTY-BRANDED PRODUCT, SERVICES, MAINTENANCE, OR SUPPORT, ADDITIONAL THIRD-PARTY TERMS AND CONDITIONS MAY APPLY.
5. **Software.** Software is subject to the separate software license agreement accompanying or made available to you in connection with the software. With respect to software made available to you by Fusion3 in connection with Services, if no license terms accompany the software, then subject to your

compliance with the terms set forth in this Agreement, Fusion3 hereby grants you a personal, nonexclusive license to access and use such software only during the term of the Services and solely as necessary for you to enjoy the benefit of the Services as stated in the applicable Service Contract(s). A portion of the software may contain or consist of open source software, which you may use under the terms and conditions of the specific license under which the open source software is distributed. You agree that you will be bound by any and all such license agreements. Title to software remains with the applicable licensor(s).

Return Policies; Exchanges. Fusion3's return policy can be found at www.Fusion3.com/returnpolicy and you agree to those terms. Note that under the terms of the Return Policy, not all Product may be returned. You must contact us directly before you attempt to return qualifying Product to obtain a Return Material Authorization Number for you to include with your return. You must return qualifying Product to us in its original or equivalent packaging. You are responsible for risk of loss, shipping and handling fees for returning or exchanging Product. Additional fees, including up to a 15% restocking fee, may apply. If you fail to follow the return or exchange instructions and policies provided by Fusion3, Fusion3 is not responsible for Product that is lost, damaged, modified or otherwise processed for disposal or resale. At Fusion3's discretion, credit for partial returns may be less than invoice or individual component prices due to bundled or promotional pricing.

6. **Changed or Discontinued Product.** Fusion3's policy is one of ongoing update and revision. Fusion3 may revise and discontinue Product at any time without notice to you and this may affect information saved in your online "cart." Fusion3 will ship Product that has the functionality and performance of the Product ordered, but changes between what is shipped and what is described in a specification sheet or catalog are possible.
7. **Service and Support.** Service offerings may vary. In addition to these Terms of Sale, Fusion3 and/or your third-party service provider may provide such service and support to you in accordance with term and conditions of Fusion3 Service Descriptions located at (www.fusion3design.com/warranty) or as otherwise delivered to you. Fusion3 and/or your third-party service provider may in their discretion revise their general and optional service and support programs and the terms and conditions that govern them without prior notice to you. Your purchase of services is pursuant to this Agreement and the terms and conditions of Fusion3 Service Descriptions, if applicable, published online at the time of your purchase. Fusion3 has no obligation to provide service or support until Fusion3 has received full payment for the Product or service/support contract you purchased. Fusion3 is not obligated to provide third-party branded service or

support, or service or support for any products or services that you purchased through a third-party and not Fusion3. **Fusion3 and/or your third-party service provider will have no liability for loss or recovery of data, programs or loss of use of system(s) arising out of the services or support or any act or omission, including negligence, by Fusion3 or your-third-party service provider.** Fusion3 and/or your third-party service provider is not permitted by law to copy pirated or copyrighted materials or to copy or handle illegal data. Prior to Fusion3 and/or your third-party service provider providing service or support, you represent that your system(s) does not contain illegal files or data. You also represent that you own the copyright or have a license to make copies to all files on your system and do not have any data that would cause Fusion3 or your third-party service provider to be liable for copyright infringement if such data was copied by Fusion3 and/or your third-party service provider. Parts used in repairing or servicing Product(s) may be new, equivalent-to-new or reconditioned.

8. **Recording Calls.** In carrying out its obligations, Fusion3, or its third party subcontractors, may at its discretion and solely for the purposes of monitoring the quality of Fusion3's response, record part or all of the calls between you and Fusion3. You consent to have your calls with Fusion3 or its third-party subcontractors monitored or recorded.
9. **Limitation of Liability.** FUSION3 DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING BUT NOT LIMITED TO ANY LIABILITY FOR PRODUCT NOT BEING AVAILABLE FOR USE, LOST PROFITS, LOSS OF BUSINESS OR FOR LOST OR CORRUPTED DATA OR SOFTWARE, OR THE PROVISION OF SERVICES AND SUPPORT. EXCEPT AS EXPRESSLY PROVIDED HEREIN, FUSION3 WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. YOU AGREE THAT FOR ANY LIABILITY RELATED TO THE PURCHASE OF PRODUCT, FUSION3 IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AMOUNT INVOICED FOR THE APPLICABLE PRODUCT. SOME JURISDICTIONS MAY NOT ENFORCE ALL OF THESE LIMITATIONS, AND ONLY THE LIMITATIONS THAT ARE LAWFULLY APPLIED TO YOU IN YOUR JURISDICTION WILL APPLY.
10. **Not For Resale or Export.** You agree to comply with all applicable laws and regulations of the various states and of the United States. You agree and represent that you are buying for your own internal use only, and not for resale or export. Fusion3 has separate terms and conditions governing resale of Product by third parties and transactions outside the United States. Product, which may include technology and software, is subject to U.S. export laws as well as the

laws of the country where it is delivered or used. Product may not be sold, leased, or transferred to restricted countries, restricted end-users, or for restricted ends. You agree that Product purchased from Fusion3 will not to be used for activities related to weapons of mass destruction, including activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, or chemical or biological weapons. You further agree that you will not sell, lease, or otherwise transfer Product to end-users engaged in these activities.

11. Governing Law. THE PARTIES AGREE THAT THIS AGREEMENT, ANY SALES THERE UNDER, OR ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHETHER PREEXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND FUSION3 arising from or relating to this Agreement, its interpretation, or the breach, termination or validity thereof, the relationships which result from this agreement, Fusion3's advertising, or any related purchase SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO CONFLICTS OF LAW.

12. Dispute Resolution and Binding Arbitration.
YOU AND FUSION3 ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT, SUCH AS ACCESS TO DISCOVERY, MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.

ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHETHER PREEXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND FUSION3, its agents, employees, principals, successors, assigns, affiliates (collectively for purposes of this paragraph, "Fusion3") arising from or relating to this Agreement, its interpretation, or the breach, termination or validity thereof, the relationships which result from this Agreement (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this Agreement), Fusion3's advertising, or any related purchase SHALL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (AAA) or JAMS. Arbitration proceedings shall be governed by this provision and the applicable procedures of the selected arbitration administrator, including any applicable procedures for consumer-related disputes, in effect at the time the claim is filed. Consumer claimants (individuals

whose transaction is intended for personal, family, or household use) may elect to pursue their claims in small claims court rather than arbitration. The arbitration or small-claims court proceeding will be limited solely to the individual dispute or controversy between customer and Fusion3.

You agree to an arbitration on an individual basis. In any dispute, NEITHER CUSTOMER NOR FUSION3 SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS, OR ARBITRATE ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. If any provision of this arbitration agreement is found unenforceable, the unenforceable provision shall be severed, and the remaining arbitration terms shall be enforced (but in no case shall there be a class arbitration).

The arbitrator shall be empowered to grant whatever relief would be available in court under law or in equity. This transaction shall be governed by the Federal Arbitration Act 9 U.S.C. sec. 1-16 (FAA). Any award of the arbitrator(s) shall be final and binding on each of the parties, and may be entered as a judgment in any court of competent jurisdiction. Fusion3 will be responsible for paying any individual consumer's arbitration fees. If you prevail on any claim that affords the prevailing party attorneys' fees, the arbitrator may award reasonable fees to you under the standards for fee shifting provided by law. For information on AAA or JAMS, contact the following: American Arbitration Association, (800) 7787879, www.adr.org; JAMS, (800) 352-5267, www.jamsadr.com.