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“Harnessing Positive Electrical Solutions for You”

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**IN THE ABSENCE OF AN EXECUTED AGREEMENT BETWEEN PARTIES,**

**THE FOLLOWING TERMS AND CONDITIONS FOR ORDER ACCEPTANCE WILL APPLY.**

1. **Recital**. Winar Connection, Inc. (“Manufacturer”) is a custom cable assembly and wire harness manufacturer and inventory vendor distributor that furnishes the personnel, material, equipment, services and facilities to manufacture products in accordance with specifications provided by Buyers. Buyer desires to engage Manufacturer to manufacture certain custom cables and/or wire harnesses and/or to distribute certain cables or wire harnesses to Buyer in accordance with orders issued from time to time by Buyer.

2. **Scope of Work**. Buyer hereby engages Manufacturer, and Manufacturer hereby accepts Buyer’s engagement, to furnish the personnel, material, equipment, services and facilities to manufacture certain products (“Products”) in accordance the scope of work attached hereto and made a part hereof in accordance with the specifications contained in the Scope of Work.

3. **Changes**. Manufacturer’s Terms and Conditions of acceptance are solely within the Manufacturer’s discretion. 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 included or attached to Buyer’s Scope of Work in any way, shall not apply to the Order. No changes in the Scope of Work will be made unless evidenced by a written agreement signed by both parties hereto. Except for such written agreement, no oral, verbal or written modifications, including subsequent purchase orders or change orders, shall bind either party hereto.

4. **Acceptance by Manufacturer**. No Order is accepted unless Manufacturer issues an Order Confirmation. Manufacturer will contact Buyer regarding order discrepancies. If Buyer fails to respond to Manufacturer within 10 business days, the Order may be rejected. Pricing and planned delivery dates will be provided on the Order Confirmation. Manufacturer will make every effort to deliver order by confirmed delivery date, but unforeseen circumstances can and do arise. Manufacturer will notify buyer as soon as possible if delivery dates change.

5. **Order Modification, Cancellation or Delivery Schedule Changes**. 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).

6. **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. Title to, risk of loss for, damage to, and delay in delivery of, Products shall pass to Buyer at the time of delivery of possession of the Products to a common carrier. Buyer shall cover all delivery, shipping and transit costs and expenses. Buyer assumes any and all liabilities, expenses and obligations regarding transportation, insurance, or any damage or loss to the Products in transit.

7. **Acceptance by Buyer**. Buyer shall have thirty (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.

8. **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 unless Manufacturer has agreed in writing to a different payment term. 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.

9. **Engineering Changes**. If Buyer requests that Manufacturer incorporate an engineering change into a Product, such request shall include a written 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 in writing 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.

10. **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.

11. **Confidentiality**. The parties acknowledge that each party may disclose propriety information, including, but not limited to, software, technology, trade secrets and knowhow (“Propriety Information”) during the course of the order, acceptance, manufacturer and delivery of Products from Manufacturer to Buyer. The parties also acknowledge that each part’s Propriety Information 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.

12. **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).

13. **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 one (1) year from the date of delivery of the Products to Buyer. Buyer shall notify Manufacturer via customer services representative within forty-eight (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. Manufacturer will assign Buyer a Return Material Authorization (“RMA”) number upon receipt of any Products returned by Buyer pursuant to this Section 11, Manufacturer shall inspect Products in accordance with the applicable IPC/WHMA-A-620 Workmanship Standard. If Manufacturer determines that the defect is not due to nonconformity with Specifications or the applicable IPC/WHMA-A-620 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/WHMA-A-620 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.

14. 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.

15. LIMITATION OF LIABILITY. IN NO EVENT SHALL THE MANUFACTURER BY LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTIAL, 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 LIABILTIY OR OTHERWISE, EVEN IF BUYER HAS BEEN WARNED OF THE POSSIBLITY OF ANY SUCH DAMAGES.

16. **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.

17. **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 Ohio, 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 Ohio, 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.