



24 Boston Court
Longmont, CO 80501
303 651-0707(P)
www.custommicrowave.com

CMi STANDARD TERMS AND CONDITIONS OF PURCHASE

1. ACCEPTANCE OF TERMS AND CONDITIONS

- (a) The terms and conditions of purchase stated herein govern the entire transaction of purchase between Custom Microwave Inc (“Buyer”) and Seller for the goods (the “Goods”) and services (the “Services”) described herein, and negate all prior negotiations, communications, representations and agreements.
- (b) Seller shall be deemed to have accepted the terms and conditions hereof upon the earliest to occur of: Seller's acknowledgment, acceptance of payment, or commencement of performance
- (c) Unless expressly accepted in writing by Buyer, additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgment are objected to by Buyer and have no effect.
- (d) All specifications, drawings and data submitted to Seller herewith are incorporated herein and made a part hereof.

2. CONTRACT DIRECTION

- (a) Only the Buyer Procurement Representative has authority on behalf of Buyer to make changes. All amendments must be in writing and executed by both parties.
- (b) Buyer engineering and technical personnel may from time-to-time exchange of information with Seller's personnel concerning the Work hereunder. No such action shall be deemed to be a change.

3. CHANGES

- (a) Buyer may, at any time and from time to time, by written notice to Seller, make changes in drawings, specifications, quantities, delivery schedules and shipping instructions for any Goods or Services.
- (b) If any such change increases or decreases the cost of performing this order or the time required for its performance, an equitable adjustment in prices or delivery schedules shall be made provided, however, that any claim by Seller for such adjustment, which shall be subject to acceptance by Buyer, shall be presented in writing to Buyer within 10 days from the date the change is ordered by Buyer.

4. NOTICE OF LABOR DISPUTES

- (a) Whenever Seller has knowledge that an actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer.



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5. WARRANTIES

- (a) Seller warrants that all Goods delivered under this order are free from defects in materials and workmanship (including damage due to unsatisfactory packing by Seller) and that all Goods and Services will be strictly in accordance with Buyer's specifications and drawings

6. PACKING AND SHIPMENT

- (a) Unless otherwise specified, all Goods are to be suitably packed to insure against damage from weather and transportation in accordance with good commercial practice
- (b) Buyer may specify the routing of any shipment, but if not specified, Seller shall route shipments to achieve the lowest freight rate.
- (c) A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the Purchase Order number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Purchase Order number.
- (d) Unless otherwise specified, delivery shall be FOB destination.

7. DELIVERY

- (a) Seller shall make deliveries at the times and in the quantities specified herein, and Buyer, in addition to any other rights or remedies it may have, may refuse to accept delivery of all or any part of any delivery not made by the scheduled date. Buyer may postpone or cancel without penalty, delivery of any Goods or the provision of Services which are not shipped or provided at the time specified herein
- (b) Buyer shall have no obligation to purchase any Goods or Services in excess of or different from those specified herein. All Goods shipped in excess of the quantity ordered may, at Buyer's sole discretion, be returned to Seller for full credit or held by Buyer for Seller's instructions as to disposal, in all events at Seller's risk and expense.

8. INSPECTION

- (a) All Goods are subject to inspection and test by a representative of the Buyer at place of manufacture or at destination. Acceptance of any Goods shall not alter the warranties of Seller contained herein.



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- (b) If any of the Goods are found at any time to be defective in material or workmanship (including Goods damaged, due to unsatisfactory packaging by Seller) or otherwise not in strict conformity with the requirements of the order, including drawings and specifications, Buyer, in addition to any other rights which it may have under warranties or otherwise, may (a) reject and return such Goods at Seller's expense and receive full credit for any such rejected Goods, (b) upon written request require replacement of any such rejected Goods without additional cost to Buyer, and (c) retain and use the Goods with an equitable reduction in purchase price.

9. INDEMNIFICATIONS

- (a) Seller shall defend, hold harmless and indemnify Buyer, its successors, assigns, customers and other users of the Goods and Services from and against all liability, loss, damages and expenses including attorney's fees by reason of any and all claims and suits for the following:
- a. Infringement or other misuse of any patent, trademark, copyright, trade secret or other proprietary right arising out of the sale or use of any Goods or Services furnished hereunder
 - b. defect in any Goods, whether latent or patent, including alleged improper construction and design
 - c. Alleged violation of any statute, ordinance, administrative order, rule or regulation connected with the manufacture or sale of Goods or Services.
- (b) Seller shall have no liability with respect to patent infringement for Goods to which Buyer furnishes complete specifications.

10. INSURANCES

- (a) In the event that Seller, its employees, agents, or subcontractors enter the site(s) of Buyer or its customers for any reason in connection with this Purchase Order, then Seller and its subcontractors shall procure and maintain for the performance of this Purchase Order: workers compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and any such other insurance as Buyer may require
- (b) Seller and its subcontractors shall comply with all site requirements
- (c) Seller shall provide Buyer thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's required insurance, provided however such notice shall not relieve Seller of its obligations to procure and maintain the required insurance.
- (d) If requested, Seller shall send a "Certificate of Insurance" showing Seller's compliance with these requirements.



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- (e) Seller shall defend, indemnify and hold harmless Buyer, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers, or subcontractors

11. EXPORT CONTROL

- (a) Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C.2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Seller agrees that it will not transfer any export-controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.
- (b) Seller agrees to notify Buyer if any deliverable under this Contract is restricted by export control laws or regulations. Seller shall immediately notify Buyer if Seller is, or becomes, listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
- (c) If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
- (d) Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

12. BREACH BY SELLER

- (a) In addition to all other remedies and damages available to Buyer at law or hereunder, Seller shall be liable for all losses suffered by Buyer resulting, directly or indirectly, from any failure by Seller to timely fill any order, or from any other breach by Seller of these terms and conditions.
- (b) If Seller fails (i) to deliver conforming Goods or Services at the time specified herein, or (ii) to comply with any other provision of this order, or if Seller becomes insolvent or declares bankruptcy, Buyer may cancel the whole or any part of the Goods or Services ordered without liability to Buyer.



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- (c) Buyer may purchase Goods or Services in substitution for those ordered from Seller, and Seller shall pay Buyer, upon demand, any increase in cost above the order price incurred by Buyer thereby, or Buyer may elect to take title to any of Seller's work-in-process and pay Seller its cost thereof.

13. TERMINATION WITHOUT CAUSE

- (a) Notwithstanding anything herein to the contrary, Buyer may cancel this order at any time, in the event that Buyer is unable to use the Goods or Services because of: accident; strike or other labor difficulty; labor shortage; fire; explosion; flood, earthquake or adverse weather conditions; delay in transportation or lack of transportation facilities; federal, state, county or local government or governmental agency laws, rules, regulations, orders, proclamations or decrees; shortage of fuel, power, materials or supplies; or any cause beyond the control of Buyer.
- (b) Buyer may otherwise terminate this order in whole or in part, without cause, by notice to Seller, provided that Buyer shall be liable for the value of conforming Goods and Services supplied to Buyer as of the date of termination plus any actual costs incurred by Seller required for the timely delivery of Goods scheduled on the order, and provided further that Seller shall notify Buyer of Seller's termination claim for such amount within 30 days after such termination date.
- (c) IN NO EVENT SHALL BUYER BE LIABLE FOR SELLER'S LOST PROFITS, OR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF SELLER.

14. COMPLIANCE WITH APPLICABLE LAWS:

- (a) Seller agrees that, in the performance hereof, it will comply with all applicable laws, statutes, rules, regulations, or orders of the United States Government or of any state or political subdivision thereof, which shall be deemed incorporated herein by reference.
- (b) Without limiting the generality of the foregoing, Seller agrees that it will include on all invoices issued by Seller hereunder the following statement: "The Seller represents that with respect to the production of the articles and/or performance of the services covered by this invoice, it has fully complied with all provisions of the Fair Labor Standards Act of 1938, as amended."
- (c) Seller shall furnish Buyer, upon its request from time to time, in such form as Buyer may designate certificates of Seller's compliance with any such laws, statutes, rules, regulations and orders.
- (d) The parties hereby incorporate the requirements of 41 C.F.R. § 60-1.4(a) and 29 C.F.R. § 471, Appendix A to Subpart A, if applicable.

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.



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15. PROHIBITED MATERIALS:

Acceptance of this Order is a positive affirmation by the Seller that none of the below chemicals are present or used in the production of any products sold to the Seller. "Products" include chemicals, consumables, and maintenance parts used for manufacturing and facility operations (gaskets, seals, hydraulic and cutting fluids, etc.) in addition to hardware.

- Decabromodiphenyl ether (DecaBDE) (CASRN 1163-19-5)
- 2,4,6-Tris(tert-butyl)phenol (2,4,6-TTBP) (CASRN 732-26-3)
- Hexachlorobutadiene (HCBd) (CASRN 87-68-3)
- Pentachlorothiophenol (PCTP) (CASRN 87-86-5)
- Phenol, isopropylated phosphate (3:1) (PIP(3:1)) (CASRN 68937-41-7)

16. AFFIRMATIVE ACTION:

For any vendor agreements, contracts, subcontracts, or POs of \$15,000 or more, the following applies:

This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a) and 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or nation origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, or disability.

For any vendor agreements, contracts, subcontracts, or POs of \$150,000 or more, the following applies:

This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-751.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals passed on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability. Contractor/subcontractor agrees to comply with all the provisions set forth in 29 CFR Part 471, Appendix A to Subpart A (Executive Order 13496).