

CMi's Standard Terms and Conditions

Definitions - As used in this order, the following terms shall have the meanings shown below:

“**Buyer**” means the party identified on the face of this Order with whom Seller is contracting, including any applicable Buyer personnel (Buyer’s officers, employees, agents).

“**Buyer’s Customer**” mean’s Buyer’s customer(s) under a Prime Contract, if applicable. If the Buyer’s customer is the Government, this means the United States of America (US) via its authorized representative.

“**Order**” means the purchase order or subcontractor or other designation, including all referenced documents, exhibits, and attachments, under which these terms and conditions are incorporated by reference.

“**Parties**” mean Buyer and Seller collectively.

“**Party**” means Buyer or Seller individual.

“**Prime Contract**” means the contract, if any, between Buyer and a higher-tier customer.

“**Seller**” means Customer Microwave, Inc. (CMi), including any applicable Seller personnel, and if applicable, its suppliers/subcontractors, with whom the Buyer is contracting,

“**Subcontractor**” means any supplier or other company, at any tier, utilized by Seller to perform Work required by this order.

“**Work**” means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this order.

ACCEPTANCE OF ORDER TERMS AND CONDITONS

- (a) This Order integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties. Seller’s acknowledgment, acceptance of partial or full payment, shall constitute Seller’s unqualified acceptance of this Order.
- (b) Unless expressly accepted in writing Seller, additional or differing terms or conditions proposed by Buyer, or included in Buyer’s order are objected to by Seller and have no effect, except for orders originating from the US Government wherein FAR/DFAR/NFS clauses applicable to small businesses will be reviewed prior to acceptance.
- (c) Headings used in this Order are inserted for the convenience of the Parties and shall not define, limit, or define, limit, or describe the scope or intent of the provisions of this Order.

APPLICABLE LAWS

- (a) This Order and any matter arising out of or related to this Subcontract shall be governed by and enforced in accordance with the laws of the state of Colorado, without regard to that state’s conflicts of laws provisions, including its provisions of the Uniform Commercial Code, but shall not be governed by the provisions of the U.N. Convention on Contracts for the International Sale of Goods.
- (b) Seller represents and warrants that all Work has been manufactured and sold, and all services provided, in compliance with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances of the U.S. Seller shall procure all relevant licenses/permits, and pay all fees, taxes, and other required charges, and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority. Seller shall be responsible for compliance with all requirements and obligations relating to its employees under all local, state, and federal statutes, ordinances, rules, and obligations.

ORDERING

- a) Due to the fact that there are many variables affecting the proper selection, use and installation of parts manufactured or sold by Seller, since each potential system utilizing these parts is unique with differing component configurations and attributes and differing requirements and environments, Buyer agrees it is solely responsible for the selection and use of Seller’s parts ordered. Accordingly, notwithstanding any information provided by Seller, Buyer is responsible for consulting with its own engineers and other appropriate professionals who are familiar with the specific systems into which Parts are to be incorporated so that the proper selection, use and installation of such parts, and the adequacy of the system and back-up systems, can be determined. As a result, Buyer is barred from any recovery against Seller including, without limitation, any recovery under the express warranty specified under Warranties (a) by reason of improper selection, use and/or installation of the Parts and, with respect to the systems in which such parts are to be utilized, improper system design and/or the inadequacy of back-up systems, and Seller shall have no liability on account thereof, and same is hereby waived.

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- b) Buyer's organization shall provide the name of its authorized party (Buyer's Representative) who has the sole authority to enter into or make changes/amendments to this Order from the Work specified herein (as indicated on the face of any order received). All valid contractual direction must be written and signed by the Buyer's Representative. A change in the Buyer Representative may be made at any time provided notification by an authorized corporate official of the Buyer is sent to Seller within ten (10) days of any such change.

PRICES, PAYMENTS, TAXES

- (a) Except as otherwise specified on the Order, the purchase price for the Parts shall be the list price for such parts as reflected on the Order, and if not so stated, then as otherwise reflected on Seller's price list at the time of shipment.
- (b) Unless otherwise specified, or Buyer's has provided Seller proper exemption certificate(s), prices include all federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice, including, if deliverable that is restricted by export control laws or regulations, all costs associated with obtaining export license(s) and export shipment(s).
- (c) Invoices shall be submitted to Buyer within ten (10) days after shipment; Payment terms as stated in Seller's Proposal.

CHANGES

- (a) Buyer may by written order make changes within the general scope of this Order in any one or more of the following: (1) drawings, designs, or specifications; (2) method of shipping; (3) description of Work to be performed; (4) delivery schedule; and (5) any Buyer-furnished property.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of Work to be performed under this Order, Buyer shall make an equitable adjustment in the: (1) estimated price, delivery, or completion schedule, or both; (2) amount of any fixed fee; and/or (3) other affected terms.
- (c) Seller must submit any proposal for adjustment under this clause within thirty (30) days from the date of receipt, from Buyer, of the written order directing the change. If Seller's proposal includes the cost of property made obsolete or unusable by the change, Buyer shall have the right to prescribe the manner of disposition of such property.
- (d) Neither these Standard Terms nor the Order may be modified or amended except by an instrument in writing signed by the party or parties against whom enforcement is sought.
- (e) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Order. However, nothing in this "Changes" clause shall excuse Seller from proceeding without delay in the performance of this Subcontract as changed.

DELIVERIES

- (a) Shipping dates specified in an Order are approximate and are based upon prompt receipt of all necessary documentation and information. Unless otherwise agreed to as noted on the face of the applicable invoice, Parts shall be delivered, (i) for sales having an ultimate destination within the United States and its territories, "**FOB Origin**"; or (ii) for sales having an ultimate destination outside the United States or its territories, "ex works CMI's applicable plant"; as designated on the face thereof, and in each instance Seller is authorized to ship parts by carrier.
- (b) Unless otherwise specified by these Standard Terms or on the face of the applicable invoice, delivery shall occur and risk of loss of the Parts shall pass to Purchaser upon delivery of Parts, at Seller's facility, to a carrier or the truck of Seller or Purchaser, as the case may be. Further, for purposes of these Standard Terms and the applicable invoice, "shipment" shall also be deemed to occur upon such delivery, loading Parts onto trucks at Seller's facility and transportation.

DELAYS - CANCELLATION

- (a) Except as otherwise provided in Warranties Sections (d) or Force Majeure, Buyer is entitled to cancel only that portion of any order which is excessively delayed, it being understood that time is not of the essence. Upon such cancellation, Buyer shall only be entitled to a credit of the purchase price paid to Seller for the portion of the order which has been canceled by Buyer as a result of such excessive delay. Such remedy shall be Buyer's sole and exclusive remedy with respect to late deliveries and is expressly made in substitution of all other rights and remedies otherwise provided under applicable law.

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- (b) To invoke such cancellation, Buyer must give Seller ten (10) days prior written notice thereof provided, however, that (i) the Parts are not specially manufactured, or (ii) Seller has not caused the Parts to be manufactured or shipped the Parts in the interim. In the event the Parts are specially manufactured, Purchaser may invoke such cancellation, provided, however, that Seller has not commenced manufacturing, or made commitments for the procurement of the Parts or underlying raw materials, and be subject to any applicable cancellation fee as negotiated between the Parties.
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NOTICES

INDEPENDENT CONTRACTOR RELATIONSHIP –

Seller's relationship to Buyer shall be that of an independent contractor. This Order does not create an agency, partnership, or joint venture relationship between Buyer and Seller or Buyer and Seller personnel. Seller shall not exercise the right or authority to create any obligation or responsibility including, without limitation, contractual obligations and obligations based on warranties or guarantees, on behalf of or in the name of Buyer. Seller shall not misrepresent its authority to any third-party.

INFORMATION OF THE PARTIES –

Buyer - Information provided by Buyer to Seller remains the property of Buyer. Seller agrees to keep confidential and otherwise protect from disclosure all information obtained by Seller from Buyer in connection with this Subcontract and identified by Buyer as confidential or proprietary including, but not limited to, information subject to a non-disclosure agreement between the Parties.

Buyer has no right, title or interest in or to (i) the Specifications and other specifications and technical information furnished by Seller or supplied by Buyer and modified by Seller concerning the Parts or the proprietary information contained in any of the foregoing by reason of the sale of such Parts or otherwise; (ii) designs of Parts, (iii) Seller's Process Technology and (iv) any and all related improvements of any of the foregoing (the foregoing items (i) – (iv) are collectively, the "Seller's Property"). Buyer hereby acknowledges the validity of the Seller's Property, without limitation, patents and patent applications presently pending. Buyer hereby agrees that it will not directly or indirectly infringe the Seller's Property or contest or challenge the validity of the Seller's Property in any way.

Seller - Seller shall not provide any confidential or proprietary information to Buyer without prior execution of a non-disclosure agreement by the Parties. Buyer agrees not to directly or indirectly copy or reproduce any Seller Property, and further agrees that it will not disassemble, decompile, or reverse engineer the Parts or otherwise misappropriate or utilize the Seller's Property. The Seller's Property shall be kept confidential by Buyer and Buyer shall not disclose same to any third party, nor shall same be used by Buyer for any purpose other than to assist Seller in supplying the Parts. All Seller Property and tooling supplied or purchased by Seller shall be and remain the exclusive property of Seller. With respect to designs owned by Buyer, such ownership shall be exclusive of Seller's unique designs, technologies and internal components utilized in meeting Buyer's designs. All improvements to Seller's Property and the Parts and the related Intellectual Property shall remain the exclusive property of Seller irrespective of whether the improvements were suggested or made by or on behalf of Buyer or any other Party.

EXPORT CONTROL

- (a) Seller shall comply with all applicable U.S. export control and economic sanctions laws and regulations including, but not limited to, the requirements of: (1) the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. 120-130) as amended; (2) the Export Administration Regulations ("EAR") (15 C.F.R. 730-774) as amended; (3) the Office of Foreign Assets Control Regulations (31 C.F.R. 501-598) as amended. Seller shall not transfer any export controlled item, data, or service, to include transfer to foreign persons employed by, associated with, or under contract to Seller or Seller's Subcontractors, without the authority of an export license, agreement, or applicable exemption or exception.
- (b) Seller shall notify Buyer if any deliverable under this Subcontract is restricted by export control laws or regulations. Before providing Buyer any such deliverable, Seller shall notify Buyer in writing of the correct export jurisdiction and classification of the deliverable (i.e., whether the deliverable is subject to the ITAR or EAR).
- (c) Seller represents that Seller is not listed in any of the restricted or excluded party lists maintained by the Government including, but not limited to, the Specially Designated Nationals List published by the U.S. Department of the Treasury, Office of Foreign Assets Control and the Denied Persons List, Entity List, and Unverified List published by the U.S. Department of Commerce, Bureau of Industry and Security (collectively the "Restricted or Excluded Party Lists"). Seller shall immediately notify Buyer if: (1) Seller becomes listed in any of the Restricted or Excluded Party Lists; (2) Seller's export privileges are denied, suspended, or revoked in whole or in part by any U.S. or non-U.S.

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government entity or agency; or (3) Seller is or becomes involved in any violation or potential violation of the ITAR or EAR that could affect Seller's performance of this Subcontract.

- (d) If Seller is engaged in the business of exporting, manufacturing (whether exporting or not), or furnishing an/a item, data, or service subject to the ITAR, Seller represents that it is registered with the U.S. Department of State, Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR. If Seller is engaged in the business of exporting, manufacturing (whether exporting or not), or furnishing an/a item, data, or service subject to the EAR, Seller represents that it maintains an effective export/import compliance program in accordance with the EAR. Upon Buyer's request, Seller shall promptly provide Buyer with copies of policy and procedure documentation evidencing Seller's effective export/import compliance program in accordance with the ITAR and/or EAR, as relevant.
- (e) Where Seller is a signatory under a Buyer export license or agreement, Seller shall comply with such license or agreement and immediately notify Buyer in writing of any changed circumstances relating to Seller's export/import activities that could affect Seller's performance of this Subcontract including, but not limited to, ineligibility to export/import, a violation or potential violation of the ITAR or EAR, or the initiation or existence of a U.S. or non-U.S. government investigation into Seller's export/import practices. Seller shall provide Buyer all information and documentation as may reasonably be required by Buyer for Buyer to prepare and submit any export license or agreement application relevant to this Subcontract.
- (f) Seller shall include paragraphs (a) through (e), and this paragraph (f), of this clause or equivalent provisions in all lower-tier subcontracts entered into by Seller to perform Work required by this Subcontract.
- (g) Seller shall indemnify and hold Buyer harmless from and against any and all penalties, fines, losses, costs, claims, causes of action, damages, liabilities, and expenses, including, but not limited to, attorneys fees, all expenses of litigation and/or settlement, and court costs, arising from any failure of Seller to comply with this clause.

INTELLECTUAL PROPERTY INFRINGEMENT AND INDEMNITY –

- (a) Seller makes no representations or warranties as to whether Parts are free from claims of third parties regarding infringement or the like, and same are hereby waived.
- (b) In the event Parts are manufactured in accordance with Data supplied by Buyer or derived from Seller's Data but modified to meet Buyer's particular requirements or instructions, Buyer shall indemnify, defend and hold Seller and its affiliates, suppliers, and subcontractors harmless from and against any and all liabilities, damages, losses, claims, actions, proceedings, and expenses, including, without limitation, reasonable legal fees (collectively "Damages") of whatsoever kind and nature, imposed upon, incurred by, asserted, threatened or awarded against Seller directly or indirectly arising out of, relating to or resulting from (i) the infringement of any foreign or domestic Intellectual Property right, or (ii) the manufacture, sale or distribution of such Parts. Any and all amounts due for indemnity shall be paid as Damages are incurred, and in any event, within ten (10) days after receipt of written demand.

FORCE MAJEURE –

- (a) Neither Party shall be liable for damages for delay in delivery arising out of causes beyond its reasonable control and without its fault or negligence including, but not limited to, Seller's inability to obtain raw materials from suppliers or to obtain same on a timely basis, or as a result of interruption of transportation, delays in delivery, governmental regulation, labor disputes, strikes, war, fire, flood, accidents, acts of God, civil disturbance, quota restrictions or any other cause beyond Seller's control, whether or not such cause be of the same class or kind as those enumerated above, such enumeration being expressly understood to be in addition to other causes or classes of causes beyond Seller's control. In the event of the occurrence of any such causes, Seller shall have the right to allocate production and deliveries among its customers in such proportions as it deems appropriate, in its sole and absolute discretion.
- (b) In the event Seller is unable to make timely delivery of all or a portion of the Parts, by reason of any events or occurrences referred to in (a) above, Buyer must accept delivery of the Parts whenever Seller is able to make such delivery regardless of the duration of the delay in delivery of the Parts, or Seller may, in its sole and absolute discretion, cancel the undelivered portion of the Order in question, without liability.

WARRANTIES –

- (a) Subject to the provisions and qualifications set forth in these Standard Terms, Seller warrants only to the "Purchaser" that on the date of shipment the goods sold pursuant hereto the Parts delivered will conform to Seller's applicable Specifications in effect on the date of shipment. Conformance to the Specifications will be based on Seller's established

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test performance criteria and measurement instructions, as determined by Seller at time of shipment. The warranty period will be for a period of twelve (12) months after shipment from Seller's facilities unless another period is specified in writing (the "Warranty Period"). The term "Specifications" means Seller's applicable specification sheet(s) as designated by Seller concerning products sold and shipped.

- (b) In order for Buyer to be entitled to receive the rights and remedies contained in this section, Buyer must, during the Warranty Period, notify Seller in writing of the existence of possible defective Parts within thirty (30) days after discovery thereof or the time Buyer should have discovered such possible defect or else such claims shall be deemed waived. Such notification shall contain a request for a return material authorization ("RMA") from Seller, and Buyer shall comply with Seller's then applicable RMA procedures. Within fifteen (15) days after receiving the RMA, Buyer shall deliver the specified Parts to the applicable facility designated by Seller for that purpose, all as stated in the RMA, free of all liens and encumbrances. Seller may initially only request a small sample of Parts in the RMA. Buyer will pay for the transportation of the suspect Parts from Purchaser's plant to Seller's facility, all as specified in the RMA. Buyer is also responsible and liable for all other costs and expenses in connection with the return of parts under the RMA including, without limitation, recalls and disassembly of any systems, testing, inspections, insurance, removal and installation charges and other costs and expenses incurred in connection with this section. Buyer shall bear the risk of loss of all such Parts returned pursuant to this section.
- (c) The determination of whether the Parts in question are defective will be made by Seller in its sole and absolute discretion, and such determination shall be conclusive and binding on Buyer. Seller will give Buyer notice of its determination within forty-five (45) days after Seller receives such parts from Buyer as provided herein. If Seller determines that the Parts in question are defective, Seller will identify the specific defective parts and remedy such defects in accordance with this section within a reasonable time after giving notice that the Parts are defective. However, if Seller determines such Parts are not defective or are not otherwise covered by the express warranty in (a), then, to the extent feasible, such non-defective Parts will be returned to Buyer, at Buyer's sole cost and expense. In addition, Seller shall charge a fee to Buyer and Buyer shall promptly pay a fee equal to the costs and expenses of testing and inspecting such Parts as incurred by Seller. Buyer shall promptly reimburse Seller for such costs and expenses as well as the transportation expenses incurred by Seller on account of the RMA. Seller shall not be liable or responsible for damages or destroyed Parts resulting from such inspection or testing. Seller shall have no liability or obligation to Buyer for loss or damage resulting from the testing, repair, replacement, maintenance, loss of use of Parts, removal, recalls, disassembly of systems or subsequent reinstallation of parts.
- (d) If after a reasonable number of attempts by Seller to remedy a defect pursuant to (a) that in the sole determination of the Seller, repair or replacement is not appropriate or practical, Buyer shall, at its option, either receive a refund of the purchase price for the defective parts; or a credit in the amount equal to the purchase price of such parts plus transportation costs incurred by Buyer in (b), with the understanding that this remedy shall be Buyer's sole and exclusive remedy.
- (e) The maximum liability of the Seller arising out of or relating to the sale of parts evidenced by any orders or transactions shall be limited to the purchase price of the parts sold to the extent actually paid for by the Buyer and received by Seller.
- (f) Under no circumstances shall the Seller be liable to Buyer or any other person for any direct, indirect, consequential, exemplary, incidental, special damages, or lost profits or expenses arising out of any defective or non-conforming part(s) regardless of any requirement or need Seller known or should have known. It is expressly understood that Buyer's only remedy shall be the repair or replacement or a refund or credit of the purchase price. In the event it is found unconscionable or unenforceable for any reason, or any exclusive remedy fails of essential purpose this provision of waive by agreement of consequential damages shall nevertheless continue in full force and effect.
- (g) **IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION OF THE EXPRESS TERMS OF WARRANTIES SECTION (a). THE EXPRESS WARRANTY SET FORTH ABOVE AND THE OBLIGATIONS AND LIABILITIES OF SELLER THEREUNDER ARE EXCLUSIVE AND ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES CONCERNING INFRINGEMENT OR THE LIKE AND ANY WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE.**