

## Southwest Microwave, Inc Terms and Conditions of Sale

**1. Prices.** All prices are in U.S. Dollars and are subject to change without notice at any time prior to formal acknowledgement of the order by Southwest Microwave, Inc. (SMI). These prices supersede all previous prices. Prices do not include taxes, freight or insurance. Where applicable, taxes will be added to prices. Quantity discounts apply on a per-item basis only and do not apply on an aggregate basis to purchases of different items.

**2. Shipment and Delivery.** All products will be delivered Ex Works SMI's facility in Tempe, Arizona. SMI shall notify purchaser of the shipment date once SMI has received and approved all necessary information. The shipment date is estimated and subject to change due to causes not under the control of SMI including, but not limited to, strikes and other labor difficulties, material shortages, fires, accidents, orders or requests of government authorities and delays of subcontractors. Unless otherwise instructed SMI will select the best shipping method based on cost and schedule. If, at purchaser's request, shipment is held beyond scheduled shipment date, SMI reserves the right to require payment for goods based on the originally scheduled shipment date and for warehousing charges. SMI assumes no responsibility for delays, losses or damages for goods in transit. Claims for shortages or errors must be made to SMI in writing within 10 days after delivery.

**3. Acceptance of Quotation.** Purchaser's acceptance of an SMI quotation is expressly limited to these Terms and Conditions. Any additional and/or conflicting terms and conditions on any purchase order, acknowledgement or other document issued or provided by the Purchaser are specifically rejected unless expressly accepted in writing by an authorized officer or employee of SMI. In the absence of Purchaser's written acceptance or acknowledgement of the Quotation, Purchaser's acceptance and/or payment for the products described in the Quotation shall constitute Purchaser's acceptance of the Quotation.

**4. Purchase Order Cancellation/Termination.** A Purchase Order may be terminated or cancelled only with the express consent of SMI. Purchaser shall pay SMI's actual costs and reasonable expenses plus 15% for work in progress and materials committed. SMI may cancel the order without penalty if Purchaser fails to comply with these Terms and Conditions or becomes bankrupt or insolvent.

**5. Warranty.** SMI warrants each of its products to be free from defects in materials and workmanship under normal use and service for a period of one year after delivery to the purchaser (the "Warranty Period"). SMI shall repair or replace, at SMI's option, any products or part thereof that are found to be defective upon examination by SMI or authorized Warranty Service Company (each a "defective product") and are returned within the Warranty Period, shipping costs prepaid, to SMI at its plant in Tempe, Arizona or authorized Warranty Service Company. Warranty returns must first be authorized by SMI or authorized Warranty Service Company. Disassembly of any product by anyone other than an authorized representative of SMI voids the obligations of SMI to repair or replace any product so disassembled. Fuses and batteries are not warranted unless the original manufacturer warrants such parts and such warranty is marked on the product. Any claim under warranty for fuses or batteries must be made by Purchaser directly to the manufacturer.

THIS WARRANTY STATES THE EXCLUSIVE REMEDY OF THE PURCHASER, AND THE EXTENT OF SMI'S OBLIGATIONS, WITH RESPECT TO THE PRODUCTS DESCRIBED IN THE QUOTATION AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EACH OF WHICH SMI EXPRESSLY DISCLAIMS. PURCHASER UNDERSTANDS AND AGREES THAT (I) UNDER NO CIRCUMSTANCE SHALL SMI BE LIABLE FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR SIMILAR DAMAGES, REGARDLESS OF THE CAUSE, AND (II) SMI'S LIABILITY UNDER THE QUOTATION OR PURCHASE ORDER IS STRICTLY AND EXPRESSLY LIMITED TO THE WARRANTY OBLIGATIONS EXPRESSED HEREIN. SMI NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER WARRANTY CONCERNING ITS PRODUCTS.

**6. Software.** These Terms and Conditions do not convey to the Purchaser title to or ownership of any software code included with or embedded in products provided by SMI ("Software"), but only give purchaser a limited right to use the Software solely in connection with the use of such products for their intended purpose. Third-party software is subject to the license agreement terms of the applicable software product. Purchaser shall not copy, reverse engineer, decompile, disassemble or otherwise translate all or any part of any Software or permit or authorize any third party (including but not limited to the end user) to do so.

**7. Indemnification.** Purchaser shall indemnify and hold SMI, its officers, employees, and agents harmless for, from and against all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorney's fees and other legal fees and other costs and expenses the Purchaser may suffer caused by, arising out of, resulting from, attributable to or in any way incidental to the purchase of the products described in the Quotation.

**8. Performance.** No specifications provided by SMI are binding unless specifications are expressly set forth in the Quotation. SMI reserves the right to make changes to any product without prior notice and has no obligation to install such changes on products previously purchased. SMI reserves the right to discontinue any products without notice.

**9. Payment Terms.** Payment terms are initially cash in advance. Net 30 day terms may be granted to Purchaser at the discretion of SMI. SMI will charge interest, at a rate of 1.5% per month (18 % per annum), on all balances not paid within designated terms. A cash deposit may be required on custom or special orders.

**10. Returns.** All returns require prior acceptance by SMI. Returned goods will be accepted only if shipped freight and other costs are prepaid. Returns for credit must be made within 30 days of original shipment. Credit will be issued at either the price paid or the price in effect at the time of return, whichever is lower. All returns are subject to a 15% restocking charge. Obsolete, discontinued, special, custom or damaged goods are not returnable.

**11. Export/Import Control.** Purchaser agrees to comply with all import and export laws of Purchaser's country, the United States, and any other governmental authority having jurisdiction, including without limitation, the U.S. Export Administration Regulations ("Export Control Laws") Purchaser will not sell, export, reexport, transship or otherwise dispose of any products, directly or indirectly, to any person, firm, entity, or country prohibited by, or for any purpose prohibited by (i.e., nuclear, chemical or biological weapons or missile technology), Export Control Laws. Purchaser shall immediately notify SMI if Purchaser or Purchaser's customer or end-user is listed on U.S. Treasury Department's list of Specially Designated Nationals, the U.S. Department of Commerce's Denied Persons, Unverified or Entity List, or other export control lists, has been convicted of criminal activity relating to import/export or has otherwise had its export privileges suspended, denied or revoked. Purchaser agrees to hold SMI harmless for all liabilities, fines, damages or expenses including attorney's fees suffered by SMI in connection with violation of import/export laws by Purchaser.

**12. Export Controlled Items.** SMI advises Purchaser that it will not export or otherwise transfer to the Purchaser any export-controlled item without the authority of an export license, applicable license exemption or exception and may refuse to accept Purchaser's order if SMI, in its sole discretion, determines such license or exception is not available or cannot be obtained at reasonable expense. Purchaser agrees to cooperate with SMI and provide all necessary information to support any import and export authorization required by Export Control Laws or to enable SMI to determine if it should proceed with any potential order.

**13. General.** The Quotation shall be governed by Arizona law. Any dispute arising out of the Quotation shall be commenced within 1 year after the cause of the dispute has occurred, and shall be litigated in the courts of the State of Arizona, which shall have sole and exclusive jurisdiction over the dispute. The Quotation is the complete and exclusive contract between the Purchaser and SMI, relating to the products described in the Quotation. Purchaser shall not assign the Quotation without the written consent of SMI. SMI reserves the right to correct any typographical errors in the Quotation.