



Standard Terms & Conditions of Purchase

1. **General.** This Purchase Order (“**PO**”) is for the purchase for goods, services, or both as described within the Purchase Order issued by Southwest Microwave, Inc. (“**SMI**”). This PO is deemed accepted when Supplier (“**Supplier**”) returns the acknowledgment copy of this PO (the “**Order**”) or begins performing, whichever is earlier. SMI rejects any additional or inconsistent terms and conditions offered by Supplier, at any time, whether express or implied, written, or orally. Any reference to Supplier’s quotation, bid, or proposal does not imply acceptance of any term, condition, or instruction contained in that document. Any POs, so marked, should not be duplicated, and if such duplication occurs SMI reserves the right to reject and return such duplications at the Supplier’s risk and expense.
2. **Additional Documents:** Attachment A – Special Conditions – FAR/DFAR Flowdown Provisions is attached hereto and included herein by reference. These terms and conditions together with Attachment A, and any specifications, drawings, notes, instructions, engineering notices, technical data or any other documentation referred to on the face of this PO, are attached and incorporated herein by reference and supersede any prior or contemporaneous communications, representations, promises, or negotiations, whether oral or written, respecting the subject matter of the PO.
3. **Modifications.** No change to or modification of this PO will be binding upon SMI unless in writing, specifically identifying that it amends the PO, and signed, or approved electronically, by an authorized procurement representative of SMI. If Supplier becomes aware of any ambiguities, issues, or discrepancies between this PO and any specification, or other technical requirement applicable to this PO, Supplier will immediately submit the matter to SMI for resolution.
4. **Changes.** SMI may at any time by written notice make a change in drawings, specifications, descriptions, shipping instructions, quantities, and or delivery schedules. Should any such change increase or decrease the cost of, or the time required for performance of this PO, an equitable adjustment will be negotiated, evidenced by revised electronic or written PO to this order. No changes or substitution of materials made by the Supplier will be valid unless authorized in writing by SMI. Any equitable adjustment claim made by Supplier to SMI under this provision may be waived unless asserted in writing (including the amount of the claim) and delivered to SMI within fifteen (15) days from the date of receipt by Supplier of the SMI directed change to the PO.
5. **Delivery, Title, Risk of Loss, Packaging and Transportation, Schedule.**
 - a. **Delivery, Title, Risk of Loss.** Delivery shall not be deemed to be complete until all goods have been received and accepted by SMI. Title, risk of loss, and damage shall transfer to SMI upon receipt and acceptance of goods by SMI. SMI reserves the right to reject, at no expense to SMI, all or any part of any delivery that varies from the quantity agreed upon by SMI for shipment.
 - b. **Packaging and Transportation.** All supplies shall be properly packed, marked, and shipped in accordance with the requirements of the common carrier transporting such supplies and of this PO and in a manner which will permit the securing of the lowest transportation rates. Unless otherwise provided in this PO, no charge shall be made by Supplier for containers, crating, boxing, bundling, dunnage, or storage. Supplier shall reimburse SMI for all expenses incurred by SMI as a result of improper packing, marking or routing. Supplier shall route shipments in accordance with SMI’s instructions. Any transportation charges paid by Supplier with respect to which Supplier is entitled to reimbursement shall be added to Supplier’s invoice as a separate item and the receipted freight bill shall be attached thereto. Unless otherwise agreed in writing, no charges resulting from unauthorized or special transportation will be allowed and Supplier will be charged for such unauthorized or special transportation expenses.
 - c. **Schedule.** If the delivery schedule is endangered for any reason other than SMI’s fault then Supplier will, at its expense, deliver goods by the most expeditious shipping method required to fulfill the PO



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delivery requirements. SMI reserves the right to pursue additional remedies caused by late delivery. **TIME IS OF THE ESSENCE.** Supplier must immediately notify SMI in writing with all relevant information relating to any delay or threatened delay of the timely performance of this PO.

- 6. Excusable Delay.** Neither party will be in default for any delay or failure to perform due to causes beyond its reasonable control and without its fault or negligence, but any delay or failure to perform caused by the default of a sub-tier supplier of Supplier will be excused only if: (a) it is beyond the reasonable control of both the Supplier and its sub-tier suppliers and without the fault or negligence of any of them; and, (b) the goods to be furnished cannot be obtained from other sources in sufficient time to permit Supplier to meet the delivery schedule. Supplier's ability to sell goods at a more advantageous price or Supplier's economic hardship in buying materials or processing necessary for manufacture of the goods does not constitute an excusable delay event. The party affected by an excusable delay will promptly provide written notice to the other, explaining in detail the full particulars and expected duration of the excusable delay, and will use its best efforts to remedy the delay if it can be remedied. If Supplier's delivery is delayed, SMI may cancel deliveries scheduled during the excusable delay period or elect to extend the period of performance to cover the period of delay caused by the excusable delay. If the delivery of any goods is delayed for more than thirty (30) days, SMI may, cancel all or any part of this PO without liability.
- 7. Warranties.**

 - a. Product.** In addition to warranties implied in fact or law, the Supplier warrants that all articles, materials and/or services covered by the PO will: (a) be merchantable; (b) be free from defects in material, workmanship and design, even if the design has been approved by SMI; (c) conform to applicable specifications, drawings, samples, and descriptions; (d) be fit for the intended purpose and operate as intended; (e) comply with all laws and applicable regulations; (f) be free and clear of any and all liens or other encumbrances; (g) not infringe on any patent, published patent application, or other intellectual property rights of any third party; and, (f) not utilize misappropriated third party trade secret information. Supplier shall at SMI's option and in addition to all other remedies, either credit SMI for, or at Supplier's own expense replace, repair, or correct materials which are deemed by SMI to be defective or non-conforming. Supplier will be liable for all related costs, expenses, and damages including related to non-conforming goods.
 - b. Services.** Supplier acknowledges and warrants that: (a) it possesses the requisite expertise, facilities, and equipment necessary and appropriate to perform the services; (b) the services will be performed in a safe and workmanlike manner and (c) the services will be performed in accordance with the highest standards in the industry.
 - c. Application.** Such warranties, product and service together, shall run to SMI, its successors, assigns, customers, and to the users of its products, and shall survive any inspection, delivery, acceptance, or payment by SMI for the materials or services.
- 8. Price and Discounts.** The prices are as stated in the face of this PO. Supplier warrants that the prices on the face of this PO are comparable to the prices quoted by the Supplier to any other customer of the same class for like materials and quantities. It is understood that the cash discount period shall be computed from date of receipt by SMI of acceptable invoice or material, whichever is later. On invoices returned for correction, the cash discount period will date from the receipt of the corrected invoice. All prices include all packaging and freight to the specified delivery point, applicable taxes and other government charges including, but not limited to, all sales, use, or excise taxes; and all customs duties, fees, or charges.
- 9. Termination for Convenience.**

 - a.** SMI may terminate all or part of this PO for its sole convenience by providing written notice to Supplier. In the event of such termination, Supplier shall immediately stop all work hereunder and



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shall immediately cause any and all of its suppliers or subcontractors to stop work. Within thirty (30) days after the effective date of termination, Supplier may submit to SMI a claim reflecting the percentage of work performed prior to the effective date of termination, plus reasonable charges that Supplier can demonstrate to the satisfaction of SMI using its standard record keeping system have resulted from the termination. Supplier will not be paid for any work performed or costs incurred which reasonably could have been avoided. Further, Supplier will not be paid, and in no event shall SMI be obligated to pay for lost, or anticipated profits or unabsorbed indirect costs or overhead. In no event shall SMI be obligated to pay Buyer any amount in excess of the PO price. The provisions of this Article shall not limit or affect the right of SMI to cancel this PO for default. In the event of a partial termination, Supplier shall continue on any work which is not terminated.

10. Termination for Default

- a. SMI may terminate this PO if Supplier: (a) fails to make delivery by the time specified by this PO or any written extension; (b) if Supplier fails to perform any provision of this PO or fails to make progress, so as to endanger performance of this PO, and, in either of these two circumstances, within ten (10) days after receipt of notice to Supplier specifying the failure, does not cure the failure or provide SMI with a written detailed plan adequate to cure the failure; (c) delivers non-conforming goods; or, (d) in the event of Supplier's bankruptcy, suspension of business, insolvency, appointment of a receiver of Supplier's property or business, or reorganization or arrangement by Supplier for the benefit of its creditors.
- b. SMI may require Supplier to transfer title and deliver to SMI, as directed by SMI: (a) completed materials; and, (b) any partially completed materials, tools, plans, drawings, information and contract rights (collectively, "**Manufacturing Materials**") that Supplier has specifically produced or acquired for the canceled portion of this PO. Upon direction from SMI, Supplier shall also protect and preserve property in its possession in which SMI or its customer has an interest.
- c. SMI will pay the PO price for materials accepted. In addition, any payment for Manufacturing Materials accepted by SMI and for the protection and preservation of property shall be at a price determined in accordance with the Termination For Convenience Article of these Standard Terms and Conditions of Purchase, except that Supplier will not be entitled to profit. SMI may withhold from any amount due under this PO any sum SMI determines to be necessary to protect SMI or SMI's customer against loss because of outstanding liens or claims of former lien holders.

11. Taxes. All state and federal excise, sales, and use taxes when applicable, shall be stated separately on invoices. Any reduction in Supplier's cost resulting from a reduction in these taxes from those in force on the date hereof shall be paid to SMI by Supplier in reduction of the price of the goods ordered herein.

12. Intellectual Property Indemnification: Excluding goods delivered under this order which are of SMI's design, Seller agrees for goods provided under this PO, Supplier will, at its expense, defend and indemnify SMI from and against any and all loss, cost, expense, damage, claim, demand, or liability, including reasonable attorney and professional fees and costs, and the cost of settlement, compromise, judgment, or verdict incurred by or demanded from SMI arising out of, resulting from, or occurring in connection with any alleged: (a) patent, copyright, or trademark infringement; (b) unlawful disclosure, use, or misappropriation of a trade secret; or (c) violation of any other third-party intellectual property right; and (d) from expenses incurred by SMI in defense of such suit, claim, or proceeding if Supplier does not undertake the defense thereof. Supplier will have the right to conduct the defense of any such claim or action and, consistent with SMI rights hereunder, all negotiations for its settlement. But in no event will Supplier enter into any settlement without SMI prior written consent, which will not be unreasonably withheld. SMI may participate in a defense or negotiations to protect its interests. If any injunction or restraining order is issued, Supplier will, at its expense, obtain for SMI either the right to continue using and selling the goods or replace or modify the goods to make them noninfringing as it relates to



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infringement.

- 13. Materials, Tooling, Equipment, and Technical Data.** Title to any material, tooling, equipment, or technical data that SMI pays for or provides to Supplier will remain with SMI. Supplier will: (a) conspicuously label SMI property as such; (b) maintain it in good condition; (c) keep written records of the property in its possession and the location of the property; (d) not allow any liens to be placed upon it; and, (e) not change its location without prior written approval from SMI. Supplier is responsible for inspecting and determining that SMI property is in useable and acceptable condition. Upon completion or termination of the PO the property shall be returned to SMI minus normal wear and tear, unless otherwise directed in writing by SMI. Supplier agrees to replace, at its expense, all property which was not returned and will bear all risk of loss or damage of SMI property in its possession.
- 14. Stop Work:** At any time by written notice and at no cost, SMI may require Supplier to stop all or any part of the work under this PO for up to one hundred twenty (120) days (“**Stop Work Order**”), and for any further period as mutually agreed. Immediately upon receipt of a Stop Work Order, Supplier will comply with its terms. At any time SMI may, in whole or in part, either cancel the Stop Work Order or terminate the work under Section 10. Termination of this PO. To the extent the Stop Work Order is cancelled or expires, Supplier must immediately resume performance of its obligations under this PO.
- 15. Confidentiality and Intellectual Property, Personal Data.**
- a. Confidential Information and Intellectual Property.** All information, including without limitation specifications, samples, drawings, materials, know-how, designs, processes, and other technical, business, or financial information, that: (a) has been or will be supplied to Supplier by or on behalf of SMI; or (b) Supplier will design, develop, or create in connection with this PO; as to individual items or a combination of components or both, and whether or not completed, and all derivatives of (a) and (b) that Supplier has or will design, develop, or create are deemed to be “**Confidential Information and Intellectual Property**” of SMI. All Confidential Information and Intellectual Property is work made for hire and made in the course of services rendered. All rights to it belong exclusively to SMI, with SMI having the sole right to obtain, hold, and renew, in its own name or for its own benefit, patents, copyrights, registrations, or other appropriate protections. To the extent that exclusive title or ownership rights in Confidential Information and Intellectual Property may not originally vest in SMI, Supplier irrevocably assigns transfers and conveys to SMI all right, title, and interest therein. SMI’s Confidential Information and Intellectual Property will remain the property of SMI. It may not be used by Supplier for any purpose other than for performing this PO, may not be disclosed to any third party, and will be returned to SMI upon the earlier of SMI’s written request or completion of the PO. If, with SMI’s prior written approval, Supplier furnishes Confidential Information and Intellectual Property to a sub-tier supplier, Supplier will bind the sub-tier supplier to confidentiality requirements substantially identical to this provision and Supplier will remain responsible to SMI for any breach of this provision by its sub-tier suppliers. No disclosure, description or other communication of any sort will be made by Supplier to any third person of the fact of SMI’s purchase of goods or services hereunder, the terms of this PO, the substance of any discussions or negotiations concerning this PO, or either party’s performance under this PO.
- b. Personal Data.** “**Personal Data**” means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity. Supplier will: (a) treat Personal Data of all SMI personnel and prospective SMI personnel as Confidential Information and Intellectual Property; (b) take appropriate technical and organizational security measures as are required by SMI to protect Personal Data; (c) use and permit employees and third parties to use Personal Data pursuant to SMI’s instructions only for purposes directly related to the performance of obligations under this PO; (d) indemnify SMI against all losses, costs, expenses, damages, liabilities, demands, claims, actions or



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proceedings which SMI may suffer or incur arising out of any breach of this Article 16; and, (f) promptly notify SMI about: any legally binding request for disclosure of Personal Data by a law enforcement agency (unless otherwise prohibited); any accidental or unauthorized processing of Personal Data; and any requests received from individuals to whom Personal Data relates, without responding to that request unless it has been otherwise authorized to do so by SMI.

16. Export and Import Control. Supplier agrees to comply with all import and export laws of Supplier's country and of the United States. Supplier agrees that it will not transfer to SMI any export-controlled item without the authority of an export license, applicable license exemption or exception. Supplier agrees to notify SMI of the U.S. Export Commodity Classification Number of any Export-controlled item and to provide all necessary information to support import and export authorization requirements by SMI. Supplier shall immediately notify SMI if Supplier is listed on any Denied Parties list, has been convicted of criminal activity relating to import/export or has otherwise had its export privileges suspended, denied or revoked. Supplier agrees to hold SMI harmless for all liabilities, damages or expenses including attorney's fees suffered by SMI in connection with violation of import/export laws by the Supplier.

17. Business Conduct.

- a. Compliance with Laws.** Supplier and any services provided hereunder shall comply with all applicable statutes and governmental rules, regulations, and orders including without limitation the requirements of the Foreign Corrupt Practices Act, as amended, ("FCPA") (15 U.S.C. §§78dd-1, et. seq.), regardless of whether Supplier is within the jurisdiction of the United States, and Supplier shall, neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies for anything of value received from Supplier to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery.
- b. Gratuities.** Supplier warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to SMI's employees, agents, or representatives for the purpose of securing this PO or securing favorable treatment under a PO or contract.
- c. Ethics and Compliance Program.** SMI is committed to conducting its business fairly, impartially, and in an ethical and proper manner. SMI's expectation is that Supplier will also conduct its business fairly, impartially, and in an ethical and proper manner. SMI's further expectation is that Supplier will have (or will develop) and adhere to a code of ethical standards.
- d. Conflict Minerals.** To the extent Supplier supplies goods containing tin, tantalum, tungsten, or gold, Supplier commits to having a supply chain process to ensure and document a reasonable inquiry into the country of origin of the above mentioned minerals incorporated into such goods. If requested, Supplier will promptly provide information or representation that SMI reasonably believes are required to meet any conflict of mineral compliance obligations.

18. Audit. Supplier shall retain all records and documents pertaining to products or services rendered under this PO for a period of no less than three (3) years after final payment. Such records and documents shall date back to the time this PO was issued and shall include without limitation, catalogs, price lists, invoices and inventory records for the purposes of verification of prices or rates charged by Supplier for goods or services procured by SMI. SMI shall have the right to examine, reproduce, and audit all such records related to pricing and performance to evaluate the accuracy and complete of such records.

19. Governing Law. These Terms & Conditions of Purchase are governed by the laws of the state of Arizona, U.S.A, without regard to or application of its conflict of laws principles. Any dispute arising out of the order acknowledgment or these Terms and Conditions of Purchase shall be commenced within one (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.



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- 20. Assignment.** Supplier may not assign this PO or any rights or obligations under it without the prior written approval of SMI. SMI may assign this PO or any of its rights or obligations to any of its subsidiaries or affiliates to any purchase or successor to all or substantially all of the sets of the business or product line to which this PO relates without Supplier's consent and upon written notice to Supplier.
- 21. Waiver.** The failure of either party to enforce at any time any of the provisions of this PO will not be construed to be a continuing waiver of those provisions, nor will any such failure prejudice the right of the party to take any action in the future to enforce any provision.
- 22. Severability.** If any provision of this PO is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, that provision will be severed from this PO; the remaining provisions will remain in full force and effect; and a similar legal, valid, and enforceable provision will be substituted in lieu of the severed provision.
- 23. Survival.** All provisions of this PO which by their nature should apply beyond its term will remain in force after any termination or expiration of this PO.



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ATTACHMENT A SPECIAL CONDITIONS – FAR / DFAR FLOWDOWN PROVISIONS

The following Attachment A shall be incorporated by reference into all SMI purchase orders when such purchase orders are in support of a U.S. Government or Department of Defense requirement. The Federal Acquisition Regulation (“**FAR**”) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, during the performance of this PO. When a FAR clause uses a word or term that is defined in the FAR, the word or term shall have the same meaning as in the definition in FAR 2.101 in effect on the date of this PO unless (i) a different definition is expressly set forth in this PO; or (ii) the part, subpart, or section of the FAR where the clause is prescribed provides a different meaning; or (iii) the word or term is defined in FAR Part 31, for use in the cost principles and procedures. "Commercial Item" means a commercial item as defined in FAR 2.101. 2.

"Contractor" shall mean Supplier, as defined in Standard Terms and Conditions of Purchase, acting as the immediate subcontractor to SMI.

FAR/DFAR	Description	Application	FAR/DFAR	Description	Application
The following are mandatory flowdowns.					
52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS	Mandatory Flowdown	52.225-26	CONTRACTOR'S PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES	Mandatory Flowdown
52.224-3	PRIVACY TRAINING – ALTERNATE I	Mandatory Flowdown	52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	Mandatory Flowdown
52.222-62	PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706	Mandatory Flowdown	52.222-36	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES	Mandatory Flowdown
52.222-55	MINIMUM WAGES UNDER EXECUTIVE ORDER 13658	Mandatory Flowdown	52.222-35	EQUAL OPPORTUNITY FOR VETERANS	Mandatory Flowdown
52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION	Mandatory Flowdown	52.222-26	EQUAL OPPORTUNITY	Mandatory Flowdown
52.222-50	COMBATTING TRAFFICKING IN PERSONS	Mandatory Flowdown	52.222-21	PROHIBITION OF SEGREGATED FACILITIES	Mandatory Flowdown
52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT	Mandatory Flowdown	52.204-25	PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE	Mandatory Flowdown
52.222-37	EMPLOYMENT REPORTS ON VETERANS	Mandatory Flowdown	52.204-23	PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED BY KAPERSKY LAB	Mandatory Flowdown
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS	Mandatory Flowdown	52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO INFORM OF SAID RIGHTS	Mandatory Flowdown
52.203-19	PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIAL AGREEMENTS OR STATEMENTS	Mandatory Flowdown	52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	Mandatory Flowdown
252.225-7052	RESTRICTION ON ACQUISITION OF CERTAIN MAGNETS, TANTALUM, AND TUNGSTEN	Mandatory Flowdown	252.227-7037	VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA	Mandatory Flowdown
252.246-7003	NOTIFICATION OF POTENTIAL SAFETY ISSUES	Mandatory Flowdown	252.225-7048	EXPORT-CONTROLLED ITEMS	Mandatory Flowdown



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252.204-7015	NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT	Mandatory Flowdown	252.204-7000	DISCLOSURE OF INFORMATION	Mandatory Flowdown
252.204-7014	LIMITATIONS ON USE OR DISCLOSURE OF INFORMATION BY LITIGATION SUPPORT CONTRACTORS	Mandatory Flowdown	252.204-7012	SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING	Mandatory Flowdown
252.204-7009	LIMITATIONS ON USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR CYBER INCIDENT INFORMATION	Mandatory Flowdown	252.203-7002	REQUIREMENTS TO INFORM WHISTLEBLOWERS	Mandatory Flowdown
252.225-7009	RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS	Mandatory Flowdown			