

## TERMS AND CONDITIONS OF PURCHASE

1. **GENERAL:**

The word "Buyer" used herein shall refer to Southwest Microwave, Inc. When the "Confirming" order section on the face of this order has been completed in the affirmative, the order has already been placed. Orders, so marked, should not be duplicated, and if such duplication occurs the Buyer reserves the right to reject and return such duplications at the Seller's risk and expense.
2. **ADDITIONAL DOCUMENTS:**

All specifications, drawings, notes, instructions, engineering notices or technical data referred to in this order are incorporated herein by reference.
3. **ACCEPTANCE:**

This Purchase Order constitutes Buyer's offer to Seller, and becomes a binding contract on the terms and conditions set forth herein when it is accepted by Seller by acknowledgement or the commencement of performance hereof. No revisions of this order or any of the terms and conditions thereof shall be valid unless in writing and signed by an authorized representative of Buyer and no condition stated by Seller in accepting or acknowledging this order shall be binding upon Buyer if in conflict with, inconsistent with, or in addition to the terms and conditions contained herein unless expressly accepted in writing by Buyer. This Purchase Order constitutes the entire contract and shall be construed and interpreted according to the laws of the State of Arizona.
4. **WARRANTIES:**

In addition to warranties implied in fact or law, the Seller warrants that all articles, materials and/or services covered by this order will be merchantable and free from defects in material and workmanship, and will conform to applicable specifications, drawings, samples, and descriptions. In case any such item shall be defective or otherwise not in conformity with this order, Seller shall at Buyer's option and in addition to all other remedies of the Buyer, either credit the Buyer for, or at Seller's own expense, replace, repair, or correct any such materials. Such warranties together with service warranties and guarantees, shall run to the Buyer, its successors, assigns, customers and to the users of its products, and shall survive any inspection, delivery acceptance, or payment by the Buyer for the materials or services. The Seller shall hold the Buyer harmless from any damage arising from a breach of these warranties.
5. **PRICE AND DISCOUNTS:**

The prices and terms are as stated in the purchase order. Seller warrants that the prices on the face of this order are comparable to the prices quoted by the Seller 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 Buyer 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.
6. **CHANGES:**

Buyer 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 order, an equitable adjustment will be negotiated, evidenced by a written amendment to this order. No changes or substitution of materials made by the Seller will be valid unless authorized in writing by the Buyer.
7. **TERMINATION AT OPTION OF BUYER:**

(a) Performance of work under this purchase order may be terminated by Buyer at its option, in whole or in part, at any time by delivery, or by mailing of a written notice of termination to Seller. Buyer shall have such right of termination notwithstanding the existence with respect to Seller of any of the causes or events specified in Paragraph 9 (Excusable Delays) of this purchase order. (b) After receipt of a notice of termination Seller shall, unless otherwise directed by Buyer, immediately terminate all work under this purchase order and shall, unless otherwise directed by Buyer, (1) terminate all orders and subcontracts relating to the performance of the work terminated by the notice of termination; (2) settle all claims arising out of such termination of orders and subcontracts; (3) transfer title and deliver to Buyer (1) all completed work which conforms to the requirements of this purchase order and does not exceed, in quantity, the amount authorized for production by Buyer and (II) all reasonable quantities (but not in excess of amounts authorized by Buyer) of work in process and materials produced, or acquired in respect of the performance of the work terminated which are of a type and quality suitable for producing supplies which conform to the requirements of the purchase order and which cannot reasonably be used by Seller in producing supplies for itself or for other customers; (4) take all action necessary to protect property in Seller's possession in which Buyer has or may acquire an interest; (5) submit to Buyer promptly, but not later than three months from the effective date of termination, (one month in the case of partial termination) its termination claim, provided, however, that in the event of failure of Seller to submit its termination claim within such period, Buyer may determine, notwithstanding the provisions of subparagraph (c) hereof, on the basis of information available to it, the amount, if any, due Seller with respect to the termination, and such determination shall be final. (c) Upon termination by Buyer under this paragraph, Buyer shall pay to Seller the following amounts without duplication: (1) the purchase order price for all supplies or services which have been completed in accordance with this purchase order and not previously paid for; (2) the actual costs incurred by Seller in accordance with this purchase order to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting practices to the terminated portion of this purchase order, including the actual cost of work in process and materials delivered to Buyer in accordance with subparagraph (b) of the Paragraph and including the actual cost of discharging liabilities which are so allocable or apportionable; and (3) the reasonable costs incurred by Seller in protecting property in its possession in which Buyer has or may acquire an interest. Payments made under this sub-paragraph (c), exclusive of payments under subdivision (3), hereof, shall not exceed the aggregate price specified in the purchase order, less payments otherwise made or to be made. (d) The provisions of the Paragraph shall not apply if this purchase order is cancelled by Buyer for the default of Seller.
8. **MODIFICATION OF PURCHASE ORDER AND NON-ASSIGNMENT:**

This purchase order, together with any written instructions issued hereunder, contains the complete and final agreement between the Buyer and Seller, and no agreement or other understanding in any way purporting to modify the terms and conditions hereof shall be binding upon Buyer unless otherwise agreed to by Buyer in writing on or subsequent to the date of this order. Seller shall not delegate in any manner to any other person the performance of any work or the supplying of any services under this purchase order. Seller may assign monies due and to become due under this purchase order; provided, however that Buyer shall be entitled to assert against the assignee thereof all rights, claims, and defenses of every type (including, without limitation, rights of setoff, recoupment, and counterclaim) which Buyer could assert against Seller whether acquired prior or subsequent to such assignment.
9. **DELIVERY:**

Transportation – (a) All supplies shall be properly packed, marked, and shipped in accordance with the requirements of the common carrier transporting such supplies and of this purchase order and in a manner which will permit the securing of the lowest transportation rates. Unless otherwise provided in this purchase order, no charge shall be made by Seller for containers, crating, boxing, bundling, dunnage, or storage. Seller shall reimburse Buyer for all expenses incurred by Buyer as a result of improper packing, marking or routing. (b) Seller shall route shipments in accordance with Buyer's instructions. Any transportation charges paid by Seller with respect to which Seller is entitled to reimbursement shall be added to Seller'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 Seller will be charged for such unauthorized or special transportation expenses.  
Risk of loss -- Delivery shall not be deemed to be complete until all goods have been actually received and accepted by Buyer notwithstanding any agreement to pay freight, express, or parcel post or other transportation charges, and the risk of loss or damage in transit shall be upon the Seller.  
Shipping releases – Unless specific delivery dates are provided in this purchase order, Seller shall not fabricate any of the supplies covered by this purchase order, or procure any of the materials required in their fabrication, or ship any of such supplies to Buyer except to the extent authorized in written instructions furnished to Seller by Buyer. Buyer shall have no responsibility for supplies for which delivery dates or such written instructions have not been provided. Shipments in excess of those authorized may be returned to Seller and Seller shall pay Buyer for all packing, handling, sorting, and transportation expenses in connection with such shipments. Buyer may from time to time change shipping schedules specified in this purchase order or contained in such written instructions or direct temporary suspension of such scheduled shipments.  
Delays – Seller shall be liable for any damages resulting from Seller's failure to make a delivery within the timeframe called for by this order, except where (1) such delay and delivery shall be due to causes beyond the reasonable control of Seller and (2) Seller promptly notifies Buyer of such delay due to causes beyond its reasonable control. If Seller

for any reason does not comply with Buyer's delivery schedule, the Buyer in addition to any other rights or remedies available to it by law, may at its option terminate this order or cancel any portion thereof without further liability to Seller.

#### 10. INSPECTION

- (a) All goods (which term throughout this order includes without limitation raw materials, components, intermediate assemblies and end products) shall be subject to inspection and test by the Buyer and its customer to the extent practicable at all times and places including the period of manufacture, and in any event prior to final acceptance by the Buyer and its customer.
- (b) Final acceptance or rejection of the goods shall be made as promptly as practicable after delivery, except as otherwise provided in this order; but failure to inspect and accept or reject goods shall neither relieve Seller from responsibility for such goods as are not in accordance with the order requirements nor impose liability on Buyer therefore.
- (c) It is expressly agreed that payment shall not constitute final acceptance. Defective materials will be returned at Seller's risk and expense at the full invoice price, plus incoming transportation charges, if any, and no replacement of defective materials shall be made unless specified in writing by the Buyer. Buyer may reject and return any portion of the shipment which may be defective or fail to comply with specifications, drawings, samples or descriptions stated in the order without invalidating the remainder of the order.

#### 11. TAXES:

All State and Federal excise, sales, and use taxes when applicable, shall be stated separately on invoices. Any reduction in Seller's cost resulting from a reduction in these taxes from those in force on the date hereof shall be paid to Buyer by Seller in reduction of the price of the goods ordered herein.

#### 12. FREIGHT RATES, CUSTOM DUTIES, IMPORT TAXES:

Any reduction in Seller's cost resulting from a reduction in freight rates, custom duties and import taxes from those in force on the date hereof shall be paid to Buyer by Seller in reduction of the price of the goods ordered herein.

#### 13. PATENTS:

Seller warrants and guarantees that the materials delivered under this order which are not of Buyer's design shall constitute an obligation of the Seller to indemnify and hold harmless the Buyer and/or customer thereof, against any and all liability, loss and expense (including attorney's fees) by reason of any claim, action, or litigation arising out of any alleged or actual, direct or contributory infringement of patent arising from the purchase, use or sale of subject materials. If this order involves experimentation, research or development work, Seller agrees to grant to the Buyer an irrevocable, non-exclusive and royalty free license to make, have made, use, and sell any invention resulting from work under this order.

#### 14. ENGINEERING INFORMATION, TOOLS, MATERIALS, ETC.:

Seller agrees not to use any designs, tools, patterns, drawings, materials or other information or equipment furnished by the Buyer in the manufacture or design of any article or material for any other customer. All special dies, tools, patterns, jigs, fixtures, or any information or drawings supplied by the Buyer, whether loaned to the Seller or manufactured, or otherwise acquired by the Seller for the performance of this order and specifically charged to the Buyer, are the property of the Buyer. Subject property is to be marked for identification as the Buyer may designate, and upon completion or termination of the order shall be returned to the Buyer in good condition, reasonable wear excepted, together with all surplus materials, unless otherwise directed in writing by the Buyer, and Seller agrees to replace, at its expense all which are not so returned. Seller shall make no charge for any storage, maintenance, or retention of such property of the Buyer and Seller shall bear all risk of the loss for Buyer's property in Seller's possession.

#### 15. PRODUCTS, METHODS, AND MANUFACTURING PROCESSES:

Unless otherwise agreed in writing signed by the Buyer, any knowledge or information which the Seller shall have disclosed or may hereafter disclose to the Buyer incident to the placing and filing of this order, shall not, unless otherwise specifically agreed upon in writing by the Buyer, be deemed to be confidential or proprietary information, and accordingly shall be acquired free from any restriction (other than restrictions which may result from a claim for patent infringement).

#### 16. CONTINGENCIES:

Buyer reserves the right at its option, either to suspend shipments of materials covered by this order or to cancel this order, in whole or in part, at any time where such a suspension or cancellation is caused by or reasonably results from United States Government orders or other requirements, embargoes, acts of the civil or military authorities, acts of the public enemy, inability to secure transportation facilities, strikes, differences with workmen, accidents at Buyer's works or other contingencies, whether similar or dissimilar to the foregoing enumeration, beyond the Buyer's control.

#### 17. GRATUITIES:

Buyer warrants that he has not directly or indirectly paid, or promised to pay, any commission, fee or consideration, nor made or promised to make any gift or gratuity to any agent or employee of Buyer for the purpose of securing this order.

#### 18. EQUAL OPPORTUNITY CLAUSE: (Applicable to purchase orders exceeding \$10,000).

During the performance of this purchase order, Seller agrees as follows: 1. (a) Seller will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government or Buyer setting forth the provisions of this non-discrimination clause. (b) Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin. (c) Seller will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Government or Buyer, advising the labor union or workers: representative of Seller's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment (d) Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and all of the rules, regulations, and relevant orders of the Secretary of Labor. (e) Seller will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. (f) In the event of Seller's non-compliance with the nondiscrimination clauses of this purchase order or with any of such rules, regulations, or orders, this purchase order may be cancelled, terminated, or suspended in whole or in part and Seller may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (g) Seller will include the provisions of paragraph (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Seller will take such action with respect to any subcontract or purchase order as the Government or Buyer may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Seller becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction Seller may request the United States to enter into such litigation to protect the interests of the United States, 2. To the extent required by the applicable regulations Seller will file with the appropriate federal agency a complete and accurate report on Standard Form 100 (EEO-1) within 30 days after the signing of this instrument or the award of this purchase order, as the case may be (unless such a report has been filed in the last 12 months) and continue to file such reports annually, on or before March 31<sup>st</sup>. Seller will develop and maintain a written affirmative action compliance program for each of its establishments in accordance with the regulations of the Secretary of Labor promulgated under Executive Order 11246, as amended. (Contracts of \$50,000 or more).

#### 19. EXPORT/IMPORT CONTROL

Seller agrees to comply with all import and export laws of Seller's country and of the United States. Seller agrees that it will not transfer to the buyer any export-controlled item without the authority of an export license, applicable license exemption or exception. Seller agrees to notify Buyer 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 the Buyer. Seller shall immediately notify Buyer if Seller is listed in 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. Seller agrees to hold Buyer harmless for all liabilities, damages or expenses including attorney's fees suffered by the buyer in connection with violation of import/export laws by the Seller.