



Standard Terms and Conditions of Sale

- 1. Scope.** The following Southwest Microwave, Inc. ("SMI") Terms and Conditions of Sale ("Terms and Conditions of Sale") apply, without exception, to all sales of goods and services for any prospective buyer of SMI's products or services ("Purchaser"). The Terms and Conditions of Sale set forth herein, are in lieu of and replace any and all terms and conditions set forth on Purchaser's purchase order, specifications, or any other document issued by Purchaser to SMI. Any additional, different, or conflicting terms or conditions of any such document issued by Purchaser are hereby rejected by SMI, and any such document shall be wholly inapplicable to any sale made hereunder and shall not be binding in anyway upon SMI.
- 2. Waiver.** No waiver or amendment of any of the provisions within these Terms and Conditions of Sale shall be binding upon SMI, unless made in writing or by amendment expressly stating that it is such a waiver and signed by an authorized representative of SMI. No representation, warranty, course of dealing, trade usage, or other action not contained or expressly set forth herein will be binding upon SMI.
- 3. 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 SMI. These prices supersede all previous or prior prices. Prices do not include customs duties, taxes, freight, insurance, or any other governmental charges. 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.
- 4. Shipment and Delivery.** All products will be delivered EXWORKS (Incoterms 2010) SMI's facility in Tempe, Arizona. SMI shall notify Purchaser of the estimated shipment date of products upon the order acknowledgment. SMI's liability shall cease and title and risk of loss or damage to the goods shall pass to Purchaser upon delivery to the carrier. If a shipment is delayed by the carrier and/or Purchaser, the goods shall be held at SMI's facility at Purchaser's own cost and risk and Purchaser shall be liable for any delays or incurred inventory costs by SMI by or related to Purchaser's acts or omissions. The estimated delivery date is an approximate delivery date and is subject to change. Unless otherwise instructed, SMI will select the best shipping method based on cost and schedule. SMI shall not be liable for any late delivery caused by the carrier or failure of Purchaser to provide any necessary information or documentation in a timely manner. Any claim by Purchaser for any shortage or error in any shipment must be reported to SMI within ten (10) days of receipt of shipment to Purchaser. If a shortage or error is not reported within the ten (10) day time period, it shall be presumed the Purchaser received the quantity of goods upon SMI's shipping documentation and that the shipment was accurate to the order acknowledgment. SMI reserves the right to quote additional charges for any special routing, packing, labeling, handling, or insurance requested by Purchaser.
- 5. Force Majeure.** Except for payment obligations, neither party shall be liable in its performance under these Terms and Conditions of Sale for any causes beyond its reasonable control, including; but not limited to, (a) strikes and other labor difficulties, (b) material shortages or inability to obtain materials, (c) fires, earthquakes, tornados, tropical storms, floods or any other acts of God, (d) accidents, orders or requests of government authorities and delays of subcontractors, (e) delays or refusals to grant an export license or the suspension/rescindment of an export license and any other governmental actions that would limit the ability to perform hereunder; and, (f) epidemics, quarantines, or other regional medical crises. In the event of such delay as outlined above, the date of delivery hereunder shall be extended by a period equal to the time lost by reason of such delay.
- 6. Purchase Order Cancellation/Termination.** A purchase order may be terminated or cancelled only with the express written consent of SMI. Purchaser shall pay SMI's actual costs and reasonable expenses plus fifteen percent (15%) for work in progress and materials committed.
- 7. 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 three (3) years after delivery to the Purchaser (the "Warranty Period"). SMI shall repair or replace, at SMI's sole option, any products or part thereof that are found to be defective upon examination by SMI or an authorized warranty service company and are returned within the Warranty Period, shipping costs prepaid, to SMI at its plant in Tempe, Arizona or to an authorized Warranty Service Company. Warranty returns must first be authorized by SMI or authorized by a warranty service company. Disassembly of any product by anyone other than an authorized representative of SMI voids the warranty and SMI shall have no obligations 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 IS THE SOLE AND EXCLUSIVE REMEDY OF THE PURCHASER, AND THE EXTENT OF SMI'S OBLIGATIONS, WITH RESPECT TO THE PRODUCTS DESCRIBED IN THE QUOTATION OR ACKNOWLEDGMENT 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, OF WHICH SMI EXPRESSLY DISCLAIMS.

- 8. Limitation of Liability.** IN NO EVENT SHALL SMI BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, STATUTORY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, LOSS OF REVENUES, OR LOSS OF USE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, RESULTING FROM SMI'S PERFORMANCE OR FAILURE TO PERFORM UNDER THE ACKNOWLEDGMENT OR THESE TERMS AND CONDITIONS OF SALE, OR THE PERFORMANCE OR USE OF ANY GOODS OR SERVICES SOLD PURSUANT HERETO, WHETHER DUE TO A BREACH OF CONTRACT, WARRANTY, OPERATION OF LAW, OR OTHERWISE. THE AGGREGATE LIABILITY OF SMI FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THE ORDER IN NO CASE SHALL EXCEED THE AMOUNT OF THE PURCHASE PRICE PAID UNDER THE ORDER FOR THE SPECIFIC PRODUCT WHICH GIVES RISE TO THE CLAIM. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY REGARDLESS IF LIABILITY ARISES FROM BREACH OF CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), BY OPERATION OF LAW, OR OTHERWISE.



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9. **Software.** These Terms and Conditions of Sale 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 personal limited non-exclusive 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 attempt any sale, transfer, sublicense, 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.
10. **Indemnification.** Purchaser shall indemnify and hold SMI, its officers, directors, 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 (a) Purchaser’s actual or threatened breach of these Terms and Conditions of Sale, (b) Purchaser’s negligence in its performance hereunder, (iii) application or use of the goods, (iv) installation or modification made by Purchaser to the goods other than those specifically authorized by SMI.
11. **Changes.** No specifications provided by SMI are binding unless specifications are expressly set forth in the quotation or acknowledgment. SMI reserves the right to make changes or modifications to any product without prior notice to Purchaser and has no obligation to install, modify, or make such changes on products previously purchased. SMI reserves the right to discontinue any products without notice.
12. **Payment Terms.** Payments are due and payable in accordance with the terms shown on the invoice issued in connection with an order acknowledgment for goods and services covered by these Terms and Conditions of Sale. All payments shall be made in U.S. currency, sent to the address specified on such invoice. SMI may at any time revise the terms of payment set forth within these Terms and Conditions of Sale, if, in SMI’s sole judgment, the financial condition of the Purchaser does not justify such terms and may at such time demand cash-in-advance for the full order or partial order. SMI (a) may charge interest, at a rate of 1.5% per month (18 % per annum), on all balances, (b) repossess goods for which payment has not been made, (c) recover all costs of collection, including but not limited to reasonable attorney’s fees, (d) put Purchaser’s shipments on hold until; (e) and is entitled to any other rights or remedies available at law or in equity for orders not paid within the designated terms. A cash deposit may be required on custom or special orders.
13. **Returns.** All returns require prior written acceptance by SMI. Returned goods will be accepted only if shipped freight and all costs of shipment or other costs are prepaid. Returns for credit must be made within thirty (30) days of the 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.
14. **Breach.** Any one of the following acts by Purchaser shall constitute a breach of Purchaser’s obligations hereunder: (a) failure to make payment for any goods or services when due; (b) failure to accept conforming goods or services supplied hereunder; (c) the filing of a voluntary or involuntary petition in bankruptcy against Purchaser, the institution of any proceedings in insolvency or bankruptcy (including reorganization) against Purchaser, the appointment of a trustee or a receiver of Purchaser, or an assignment for the benefit of creditors of Purchaser; (d) any other act by Purchaser in violation of any of the provisions of these Terms and Conditions of Sale. In the event that Purchaser breaches these Terms and Conditions of Sale in any manner set forth above, SMI may with written notice to Purchaser, terminate the orders covered by these Terms and Conditions of Sale, or any part thereof, without any liability whatsoever. Purchaser shall pay all costs, including reasonable attorneys’ fees, incurred by SMI in any action brought by SMI to collect payments owing or otherwise enforce its rights under these Terms and Conditions of Sale.
15. **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, re-export, 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.
16. **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.
17. **General.** These Terms & Conditions of Sale 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 Sale 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. The Terms and Conditions of Sale are the complete and exclusive contract between the Purchaser and SMI, relating to the products described in the order acknowledgment. Purchaser shall not assign these Terms and Conditions of Sale without the prior written consent of SMI. SMI reserves the right to correct any typographical errors in the quotation or acknowledgment.