



TERMS & CONDITIONS OF SALE

1. General Conditions

These terms and conditions (“**Terms**”) shall apply to the purchase of products by a buyer (the “**Buyer**”) from Marki Microwave, Inc. (“**MMI**”), and constitute a material part of the bargain.

- a) No understanding, promise, or representation, and no waiver, alteration, or modification of any of the provisions stated herein shall be binding upon MMI unless accepted in writing signed by MMI.
- b) All orders are subject to credit approval and final acceptance by MMI.
- c) ANY OTHER TERMS OR CONDITIONS IMPOSED BY THE BUYER, INCLUDING AS PART OF ANY PURCHASE ORDER WHICH PURPORTEDLY MODIFIES, SUPERSEDES, OR OTHERWISE ALTERS THESE TERMS IS REJECTED BY MMI AND WILL NOT BE BINDING ON MMI UNLESS EXPRESSLY AGREED TO IN A WRITING SIGNED BY BOTH PARTIES.

2. Delivery

Unless otherwise agreed in a written agreement signed by MMI, delivery of products shall be made Ex Works (INCOTERMS 2010), at which time the title and risk of loss shall pass to the Buyer. Delivery shall be subject to MMI’s then current lead times. Shipment dates are approximate, and MMI will not be liable for any loss, expense, or damage caused by delays in delivery, or for failure of performance. due to causes beyond its reasonable control. Services performed by MMI, if applicable, will be deemed accepted by Buyer upon completion by MMI.

3. Packing, Marking, and Shipping

- a) Goods shall be packed, marked, and shipped using good commercial practices for protection and shipping. Commercially reasonable effort

will be made to accommodate Buyer’s prescribed shipping requirements.

- b) Shipping costs will be borne by the Buyer and, if advanced by MMI will be added as a line item to the invoice, or unless the Buyer’s instructions call for freight collect shipment and include an account number for billing purposes.

4. Substitutions

Minor performance variations, as mutually agreed by the Buyer and MMI, will not be deemed to constitute failures to comply with specification requirements or constitute defects in materials or workmanship. MMI reserves the right to discontinue manufacture of goods and change specifications without prior notice, provided the performance of goods already committed in a binding contract to be manufactured or supplied by MMI are neither adversely affected nor reduced below any such contract specifications until the earlier of 180 days from notice of such changes provided to the contract counterparty or until such contract performance is complete. MMI reserves the right to make product improvements without any obligation or responsibility to incorporate such changes in goods previously manufactured or delivered.

5. Pricing

- a) MMI reserves the right to revise and announce new prices for the goods covered in quotations. MMI will honor the old prices if an order is received prior to revision of those prices, or prior to the expiration of a valid quotation outstanding at the time of the price change, such quotations to expire 90 days from date of issuance unless expressly stated otherwise on the quotation. Subsequent orders for the same goods are subject to the revised or newly announced prices. Unit prices are

applicable only to the specified quantity and are subject to revision if the quantity is changed.

- b) Prices are in U.S. dollars. Any direct charges, as may be applicable, for special tooling, special testing, or screening procedures will be separately defined, priced, and listed.

6. Payment Terms; Taxes

- a) Unless otherwise stated, quoted prices do not include sales, use, excise, VAT, or similar taxes. Nor do they include import or export fees. Such taxes and fees will be borne by the Buyer.
- b) Subject to and upon approval of Buyer's credit, terms of payment are Net 30 days after date of invoice, unless otherwise specified on the invoice. Accounts with invoices past due 45 days incur a finance charge of one percent (1%) per month or the maximum amount permitted by law, whichever is lower, and all orders from such Buyer not yet shipped will be placed on credit hold and shipments will be held until account is paid current.
- c) MMI reserves the right to modify credit terms, to require COD payment, or to require payment in advance.
- d) Goods held for the Buyer beyond a reasonable period shall be at the risk of the Buyer. There is no discount for advance payment.

7. Tools; Property Rights

Unless expressly agreed in a writing signed by MMI:

- a) MMI will retain title to and possession of any models, drawings, composites, patterns, dies, molds, masks, working plates, schematics, bread boards, jigs, fixtures and tools made for or obtained from sources other than Buyer for the furnishing of products hereunder.
- b) Tools, dies, and other equipment furnished to MMI by Buyer will be at Buyer's risk and expense.

- c) All material developed from services provided by MMI, as well as the design, development or manufacture by MMI of a product for Buyer, will not be deemed to produce a work-made-for-hire, and will not give Buyer any copyright, trademark, patent, trade secret or other intellectual property rights in the service or product, or any interest in all or any portion of the mask works relating to the product. All such rights will remain the property of MMI and its licensors. No license of any type, express or implied, is granted to Buyer under the Terms with respect to such rights or with respect to any trademark of MMI or its affiliated companies.
- d) Even if MMI provides a custom product exclusively to Buyer, MMI will retain possession of all masks. In such circumstances, all masks unique to Buyer's design will be held by MMI for the exclusive use of Buyer. MMI will not use the mask for any party without authorization from Buyer. If Buyer places no production orders for six (6) months from the date of engineering sample approval or six (6) months from the last production delivery, MMI is free to dispose of such mask with no further obligation to Buyer.

8. Warranty

- a) MMI warrants to the Buyer that all MMI goods when sold are free from defects in materials and workmanship under normal use and service for a period of one year from the date of shipment, as evidenced by MMI's packing list or transportation receipt. MMI's obligation under this warranty shall be limited to the repair or replacement of goods, at MMI's option, which MMI's examination discloses to its sole discretion to be defective. In no event shall MMI's liability for any breach of warranty exceed the net selling price of the defective goods.
- b) MMI HAS NO OBLIGATION OR RESPONSIBILITY FOR GOODS WHICH

HAVE BEEN DAMAGED OR ALTERED IN ANY WAY BY OTHER THAN MMI'S EMPLOYEES, AND ANY SUCH ALTERATION WILL INVALIDATE THE ABOVE WARRANTY. Additionally, MMI makes no warranty of any kind, and accepts no liability for evaluation boards or no-cost samples, which are supplied "as-is."

- c) THE FOREGOING IS THE ONLY WARRANTY MADE BY MMI AND TO THE GREATEST EXTENT ALLOWED IN LAW MMI HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, ANY WARRANTY AGAINST INFRINGEMENT, AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OF TRADE, OR OTHERWISE, WITH RESPECT TO PRODUCTS PROVIDED UNDER THESE TERMS.

9. Warranty Claim Procedures

- a) All claims of failed or defective goods must be in writing and received by the MMI within the specified warranty period, and Buyer must obtain from MMI a Return Material Authorization prior to returning goods to MMI. Defective goods must be returned, transportation charges prepaid, to MMI for correction. MMI will reimburse transportation charges for defective products returned for warranty repair but not for goods returned which are found not to be in warranty or to have sustained damage in the field. MMI will accept products for warranty claim verification only when returned by Buyer in a condition that allows for suitable testing by MMI. Repair or replacement of defective goods will be at MMI's discretion. Upon redelivery of goods corrected under this warranty, the repaired or replaced portions shall be subject to this warranty for a period of 90

days or until expiration of the original warranty, whichever is later.

- b) If the cause of failure is determined by MMI's examination to be misuse, mishandling, or other field damage, a price quotation for repair or replacement may be submitted to Buyer; no repair or replacement work will commence before written authorization to proceed is received from Buyer. If returned goods are determined not to be defective or if the Buyer elects not to authorize correction at its expense of goods not covered by this warranty, the MMI may charge a reasonable amount for such evaluation. The Buyer will not recover from MMI by offset, deduction, or otherwise, the price of any goods returned to MMI under this warranty.

10. Limitation of Liability

- a) NO ACTION MAY BE BROUGHT AT ANY TIME MORE THAN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION AROSE, EXCEPT THAT LEGAL ACTION MAY BE COMMENCED TO RECOVER PAYMENTS DUE AT ANY TIME WITHIN THE APPLICABLE STATUTE OF LIMITATIONS. IN NO EVENT SHALL MMI'S TOTAL LIABILITY TO BUYER EXCEED THE SALES AMOUNT ACTUALLY PAID BY BUYER TO MMI FOR THE PRODUCTS OR SERVICES UPON WHICH LIABILITY IS BASED DURING THE YEAR PRECEDING THE DATE ON WHICH THE LIABILITY FIRST AROSE MMI.
- b) MMI, INCLUDING ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, AND SUPPLIERS, WILL NOT BE LIABLE FOR ANY LOST PROFITS, LOST REVENUES, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED EQUIPMENT, COST OF SUBSTITUTE EQUIPMENT OR PRODUCTS, DOWNTIME COSTS, OR CLAIMS FROM CUSTOMERS OF BUYER FOR SUCH DAMAGES, OR

ANY OTHER SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY THEREOF IN ADVANCE. THESE LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, INFRINGEMENT OF A THIRD PARTY'S PROPRIETARY RIGHTS, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS OR OTHER TORTS.

11. Rescheduling and Cancellation.

- a) Orders for standard/non-customized products may be rescheduled no more than two times without penalty, if such change is made more than 45 days prior to the then-scheduled shipment date. No shipment may be rescheduled or cancelled within 45 days of the then-scheduled ship date.
- b) Notwithstanding anything to the contrary above, orders which are cancelled prior to shipment, if standard items, are subject to a 25% restocking charge for those items already in production or in finished goods inventory awaiting shipment to Buyer.
- c) Orders for "custom" products designed or modified to the Buyer's specifications are non-cancelable for that portion in production or in finished goods inventory awaiting shipment to the Buyer, and are subject to full recovery of MMI costs. Cancellation of the remaining portion of an order for custom products (the portion that is not yet in production or finished goods inventory) is requested more than 45-days prior to the then-scheduled shipment date, MMI may in its sole and exclusive discretion consent to such cancellation, and if such consent is given a 25% restocking charge may apply.

12. Limited Non-Compete

Buyer agrees, it will not use, directly or indirectly, bare dies or other products supplied

by MMI hereunder that knowingly, or what Buyer reasonably should know, are intended to make or have-made modules or assemblies for resale which can reasonably substitute for and compete with modules or assemblies offered by MMI as products on MMI's then-current published standard products list or website.

13. IP Indemnity

- a) MMI agrees to defend, at its own expense, any rightful claims made against Buyer by a third party unrelated to Buyer ("Claimant") alleging that the products as sold by MMI to Buyer under these Terms directly infringe a United States patent, trademark, copyright, or trade secret ("IP"). MMI also agrees to indemnify Buyer against actual damages for such direct infringement which are finally awarded against Buyer in such suit or proceeding, subject to Section 10 above (Limitation of Liability).
- b) MMI's obligations described in subsection 'a', above, shall arise only with respect to claims where: (i) Buyer promptly notifies MMI, in writing, of all allegations in the claim; (ii) Buyer gives MMI full control and authority for the defense and settlement of the claim; (iii) Buyer provides MMI with all information and assistance necessary for the defense and settlement of the claim; and (iv) Claimant agrees that it will resolve the claim directly with MMI.
- c) MMI shall have no obligations under subsection 'a', above, with respect to any claim where: (i) the claim arises from either MMI's use of any material, part or subassembly provided by or specified by Buyer, or MMI's compliance with any designs, instructions or specifications furnished by Buyer; (ii) such claim arises from any modifications or additions made to the products by Buyer or any third party; (iii) such claim arises from the use or combination of the products with any other material, part, structure, subassembly, apparatus, external circuitry, software or other external elements; (iv) such claim arises from an implementation of industry

wide standards, including de facto standards, whether or not such standards have been formally established or promulgated by any governmental or industrial standard setting body, relating to the form, fit, functionality, interconnectivity or other aspects of any apparatus incorporating the products, where such Intellectual Property would not have been infringed but for the implementation of such Industry Standard; or (v) such claim is otherwise attributable to any act or omission on the part of Buyer. Buyer shall indemnify and hold MMI and its suppliers harmless against any expense or liability from claims of infringement of any IP which are described in this subsection 'c'.

- d) If an infringement claim is asserted, or if MMI believes one likely, MMI will have the right, but not the obligation: (i) to procure for Buyer the right to use the products for the use contemplated by MMI and Buyer in making these Terms; (ii) to modify the products as appropriate to avoid such rightful claim of infringement, as long as modification for this purpose does not materially impair the operation thereof; or (iii) to accept the return of the products and reimburse Buyer for the sales amount thereof.
- e) THE FOREGOING STATES MMI'S EXCLUSIVE OBLIGATION WITH RESPECT TO CLAIMS OF INFRINGEMENT OF PROPRIETARY RIGHTS OF ANY KIND, AND IS IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED.

14. Miscellaneous

- a) *Compliance with Laws.* Buyer agrees to comply with all applicable laws and regulations regarding MMI's products and services supplied hereunder. Without limiting the foregoing: (i) Buyer agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the Arms Export Control Act including the International Traffic in Arms Regulation

(ITAR), the Export Administration Act including the Export Administration Regulations, and without limitation Buyer agrees that it will not, directly or indirectly, export, re-export, trans-ship, transfer, transmit or release products, technology or software in violation of any applicable export control laws, rules or regulations; (ii) Buyer agrees to comply with all applicable commercial and public anti-bribery laws, including the U.S. Foreign Corrupt Practices Act and the UK Bribery Act. Buyer shall ensure that its officers, employees, and agents comply with this Section. Buyer shall indemnify and hold harmless MMI against all losses, costs, claims, causes of action, damages, liabilities, and expenses (including attorneys' fees, all expense of litigation and/or settlement, and court costs), arising from any act or omission of Buyer, its officers, employees, or agents in the performance of any of its obligations under this subsection (Compliance with Laws).

- b) *Government Contracts.* If Buyer's original purchase order indicates by contract number that it is placed under a government contract, Buyer will notify MMI in writing of the Federal Acquisition Regulations (FAR) or Defense Federal Acquisition Regulations Supplement (DFARS) applicable to the purchase order. Such FAR/DFARS shall not apply unless agreed by MMI in a writing.
- c) *Confidentiality.* MMI has no obligation to hold any information received from Buyer in confidence unless the information is covered by a separate signed Non-Disclosure Agreement. Neither party will publicize nor disclose the existence or substance of the transactions without the express, prior written consent of the other party.
- d) *Force Majeure.* MMI's performance under these Terms is subject to all contingencies beyond MMI's control or beyond the control of MMI's suppliers, including, but not

limited to, strikes, labor disputes, floods, the elements, civil commotion, war, riot, vis major, rules, laws, orders, restrictions, embargoes, quotas, actions or inactions of any government, foreign or domestic, or any agency or subdivision thereof, casualties, fires, accidents, shortages of transportation facilities, detention of products by customs authorities, loss of products in public or private warehouses, or other casualty or contingency beyond MMI's control or the control of MMI's suppliers or otherwise unavoidable. In any such event, MMI shall have the right, at its election and sole discretion and without any liability to Buyer, to (a) perform these Terms as so restricted or modified to the extent determined by MMI in its sole and absolute discretion; (b) perform these Terms within a reasonable time after the causes for nonperformance or delay have terminated; or (c) cancel these Terms and refund any purchase price paid.

- e) *Governing Law; Disputes.* These Terms shall be governed and construed in accordance with the laws of the State of California without regard to its conflict of law rules, and without application of the United Nations Convention on Contracts for the International Sale of Goods. The exclusive forum for the resolution of any disputes hereunder shall be California State courts in the County of Santa Clara, or federal district courts in the Northern

District of California located in San Jose, California, and the parties consent to the exclusive jurisdiction of such courts.

- f) *Assignment.* Neither party may assign its rights or obligations hereunder to a third party without the consent of the other party; provided, however, that without the consent of Buyer, MMI may assign its rights and obligations hereunder to any affiliate of MMI or successor to MMI's business.
- g) *No Third-Party Beneficiaries.* These Terms have been made and are made solely for the benefit of Buyer and MMI and their respective successors and permitted assigns. Nothing in these Terms is intended to confer any rights or remedies on any persons other than the parties to it and their respective successors and permitted assigns.
- h) *Waiver.* No waiver of any provision of these Terms or any rights or obligations of either party hereunder shall be effective, except pursuant to a written instrument signed by the party or parties making such waiver. Any such waiver shall be effective only in the specific instance and for the specific purpose stated in writing and will not constitute an ongoing waiver.
- i) *Severance.* In the event that any provisions hereof are found invalid or unenforceable pursuant to judicial decree or decision, the remainder of these Terms shall remain valid and enforceable according to its terms.

[End of Terms]