



TERMS AND CONDITIONS OF SALE

1. GENERAL

1.1 The terms "we", "us", and "our" are used to refer to Microwave Instrumentation Technologies, LLC; the terms "you" and "your" refer to Purchaser. The term "Item" is used to refer to our products or services or both provided under this contract ("Contract").

1.2 Purchaser's order is binding only when accepted in writing at the offices of Microwave Instrumentation Technologies, LLC in Suwanee, Georgia. We reject any terms and conditions in Purchaser's order which are different from or additional to these terms and conditions or any changes to the order after acceptance, unless approved in writing and signed by our authorized representative.

1.3 We may make partial shipments to fill your order. We will not be liable for our failure to perform hereunder due to any act of God, fire, labor dispute, unusually severe weather, delay caused by a government, delay of a subcontractor or supplier in furnishing materials and services, or any other cause beyond our reasonable control.

1.4 Purchasers located in the United States assume all responsibility for obtaining any required export or import authorizations for any of our Items exported from the United States. Purchaser agrees not to export any Items in violation of applicable export or import regulations. For Items shipped by us to Purchasers located outside the United States, we shall obtain any required export authorization from the United States Government and Purchaser shall provide any required assistance in obtaining information or documents required for such authorization.

1.5 If the Items are to be used in fulfilling a contract with the United States Government we agree to comply with the mandatory government contract provisions that are applicable to us under federal law and regulations, provided Purchaser has given us written notice of the applicable provisions and we have accepted them in writing.

1.6 Some products are sold subject to the WEEE Directive (2002/96/EC, Waste of Electrical and Electronic Equipment), if the product is purchased for use in a European Union country. In support of this European Directive, if a purchased item bears the official WEEE marking, the item should not be disposed of by the Buyer in an ordinary landfill. The Buyer can avoid disposal costs by contacting MI Technologies to arrange for the return of the item, with the Buyer paying only the return shipping charges to the Manufacturer, to process the item for potential reuse, recycling and/or proper disposal.

1.7 The laws of the state of Georgia, except for its rules or principles of conflict of laws, shall govern all matters relating to this sale. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

1.8 EXCEPT FOR CLAIMS FOR PERSONAL INJURY CAUSED BY ITEMS FURNISHED HEREUNDER, WE SHALL NOT BE LIABLE TO PURCHASER OR ANY OTHER PERSON OR ENTITY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS TRANSACTION OR ANY ACTS OR OMISSIONS ASSOCIATED THEREWITH OR RELATING TO THE SALE OR USE OF ANY ITEMS FURNISHED, WHETHER SUCH CLAIM IS BASED ON BREACH OF WARRANTY, CONTRACT, TORT OR OTHER LEGAL THEORY AND REGARDLESS OF THE CAUSES OF SUCH LOSS OR DAMAGES OR WHETHER ANY OTHER REMEDY PROVIDED HEREIN FAILS. IN NO EVENT SHALL OUR TOTAL LIABILITY UNDER THIS CONTRACT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID FOR ITEMS PURCHASED HEREUNDER.

1.9 Any and all claims, controversies or disputes, whether in contract or in tort, arising out of or related to this transaction or the breach, termination or validity of any agreement related hereto or arising out of or related to the sale or use of any Items furnished (a "Dispute") shall be resolved solely by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") at the offices of the AAA in Atlanta, Georgia. Each party shall appoint one arbitrator with the two arbitrators thus appointed selecting a third arbitrator. The arbitrators shall be empowered to resolve all Disputes, whether in contract or in tort, and to award any remedies authorized by this Contract and any applicable statute or common law. All arbitration proceedings, including all evidence and statements, shall be confidential and shall not be used or disclosed for any other purpose. Each party shall pay its own attorneys' fees and expenses; all other expenses of arbitration shall be equally divided between the parties, provided, however, the arbitrators shall have the authority to assess any of the foregoing costs against any party acting in bad faith. The award of the arbitrators shall be final and binding and is the sole and exclusive remedy of the parties regarding any Disputes hereunder except that nothing contained in this Contract shall prohibit either party from seeking injunctive relief or equitable remedies in a court of competent jurisdiction or pursuing other equitable remedies. A judgment on the award may be entered in any court having jurisdiction thereof. The award shall be in U.S. dollars and shall earn interest from the date of the award until satisfied in full at the United States prime interest rate as reported in The Wall Street Journal on the business day immediately preceding the date of the award. Should either party bring any legal action against the other with respect to any claim required to be arbitrated under this Contract by any method other than arbitration, the other party shall be entitled to recover from such party all damages, costs, expenses and attorneys' fees incurred as a result of such action.

1.10 Any action or arbitration arising out of this transaction must be commenced within one year after the cause of action has accrued.

1.11 If any provision of this Contract is held illegal or unenforceable by any court or other authority of competent jurisdiction, such provision shall be deemed severable from the remaining provisions of this Contract and shall not affect or impair the validity or enforceability of the remaining provisions of this Contract.

1.12 The headings are for convenience only and are not to be used in the construction or interpretation of these terms and conditions.

In the event of any inconsistency between these terms and conditions and any translation into another language, the English version shall control. In addition, all documentation delivered hereunder shall be in English. Any required translation into another language shall be the responsibility of the Buyer (acting as the "person introducing the machinery into the language area in question" - in accordance with the terms of European Directive 89/392/EEC for Machinery as amended).

2. PRICE AND PAYMENT

2.1 Prices for Items to be delivered in the United States are F.O.B. our designated factory.



TERMS AND CONDITIONS OF SALE

- 2.2 Prices for Items to be delivered outside the United States are Ex Works (INCOTERMS 2000) our facility in the United States or abroad at our election.
- 2.3 Prices do not include freight; insurance; sales, use, excise or similar taxes; or duties. Where appropriate, such taxes will be added to the invoice and paid by Purchaser, unless Purchaser provides us evidence of payment or certificate of exemption.
- 2.4 Unless we have established a credit limit for Purchaser, we may require payment, a down payment or an irrevocable letter of credit, at Purchaser's expense, in advance of shipment. If credit is granted, any amounts not paid when due shall bear interest at the rate of 1½% per month or at the highest rate permitted by law (whichever is less), from the date of shipment until paid. We retain a lien on the Items until paid for.
- 2.5 Purchaser's order will be deemed a representation that Purchaser is solvent and able to pay for the Items ordered. If Purchaser fails to make payments when due, or if bankruptcy or insolvency proceedings are instituted by or against Purchaser, or if Purchaser makes an assignment for the benefit of creditors, Purchaser will be deemed in default and we will have the right to terminate our obligations by written notice to Purchaser, but such termination will not affect Purchaser's obligation to pay for Items delivered and work in progress.
3. TITLE AND DELIVERY
- 3.1 For Items shipped to any Purchaser located within the United States, title and risk of loss pass to Purchaser when Items are tendered to the carrier at place of shipment. We can arrange for in-transit insurance on Purchaser's written instructions and at Purchaser's expense.
- 3.2 For Items shipped to any Purchaser located outside the United States, risk of loss passes to Purchaser when Items are tendered to the carrier at port of shipment, and title passes to Purchaser when Items are made available to Purchaser on board the carrier at the port of destination. We can arrange for in-transit insurance on Purchaser's written instructions and at Purchaser's expense.
- 3.3 Acceptance shall be accomplished by using applicable test procedures or programs we establish. Non-conforming Items must be rejected within ten (10) calendar days after receipt or they will be deemed accepted. If installation by us is not included in the purchase order, acceptance tests shall be performed at our plant. If Purchaser's order specifies source inspection, we will give Purchaser at least five (5) days advance notice of the date of such acceptance tests. If installation by us is included in the purchase price, acceptance shall occur at the installation site when we demonstrate that the applicable diagnostic or verification programs work properly or the Item is otherwise demonstrated to be in normal operating condition. If installation is scheduled or delayed by the Purchaser more than thirty (30) days after delivery, Purchaser shall be deemed to have accepted the Items on the thirty-first (31) day after the date of delivery.
- 3.4 Any software or documentation delivered in connection with this order is delivered under a nonexclusive, non-transferable license to use, only in connection with the Items delivered hereunder. Purchaser may not modify, reproduce, decompile, reverse engineer or transfer the software or documentation without our prior written consent. Purchaser may be required to enter into a separate license agreement which will supersede this section.
4. WARRANTY
- 4.1 We warrant good title to any hardware furnished under this Contract. For software, we warrant that we have the right to grant any software license granted. We warrant that services will be performed in a good and workmanlike manner. We also warrant that during the Warranty Period as defined below, each Item we deliver (other than separately licensed software and services) will be free from material defects in workmanship and materials and under ordinary use, conform in all material respects to its published specifications current at the time the Item was shipped.
- 4.2 Items may include refurbished goods, subassemblies or components which we warrant as provided in this section 4.
- 4.3 The Warranty Period begins on the date the Item is delivered and extends for 12 months for hardware and 90 days for software, parts and services. We will repair or replace, at our option, any product returned to us by Purchaser at its expense during the Warranty Period, which fails to satisfy this Warranty, unless the failure was the result of shipping; improper installation, maintenance or use; abnormal conditions of operation; attempted modification or repair by the Purchaser; or an act of God. We will reperform any services which do not conform to this Warranty provided we have received notice of non-conformance within the Warranty Period. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. PURCHASER'S SOLE REMEDY FOR ANY BREACH OF WARRANTY IS THE REPAIR OR REPLACEMENT, AT OUR OPTION, OF THE FAILED ITEM. WE SPECIFICALLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, TO CUSTOMERS OF PURCHASER.
5. INFRINGEMENT OF INTELLECTUAL PROPERTY
- 5.1 We will pay all costs, damages and attorneys' fees (other than attorneys' fees and punitive damages attributable to acts of Purchaser) finally awarded in any suit by a third party against Purchaser to the extent based upon a finding that the design or construction of the Item, as furnished, infringes the proprietary rights of such third party provided that Purchaser promptly notifies us in writing of any allegation of such infringement and we are given the right at our expense to settle such charge and, through attorneys of our own choice, to defend or control the defense of any suit based upon such charge; and our entire obligation to indemnify Purchaser shall not exceed the total amount paid to us by Purchaser for the allegedly infringing Item purchased under this Contract.
- 5.2 In addition, in the event that the use of an Item becomes, or in our opinion may become the subject of any claim, suit or proceeding or if the manufacture, use or sale of an Item is enjoined, we may, at our option and expense, do one or more of the following:
- obtain for Purchaser the right to use the Item;
 - modify the Item so that it becomes noninfringing or replace the Item with a noninfringing item, while remaining in compliance with Manufacturer's published specifications in all material respects;
 - cease to deliver the Item to Purchaser; or
 - require Purchaser to return the allegedly infringing Item to us, and upon return pay to Purchaser an amount equal to the price paid by Purchaser for the Item, less depreciation (based on a five-year life, with straight-line depreciation) up to the time that Purchaser ceases to use the Item as a result of such claim.



TERMS AND CONDITIONS OF SALE

5.3 Notwithstanding any other provision of this Section, we shall have no liability for any infringement arising from or occurring as a result of:

- (a) use of the Item in combination with other items, unless we sold, made or specifically recommended them all as a combination, or
- (b) incorporation of a specific design or modification at the request of Purchaser, or
- (c) the failure by Purchaser to implement changes, replacements or new releases recommended by us and made available at no cost to Purchaser, where the infringement would be avoided by such changes, replacements or new releases.

5.4 This section 5 sets forth our entire liability to Purchaser with respect to the infringement of intellectual property by the Item, and we make no warranty of noninfringement, express or implied.

6.0 ASSIGNMENT

This Agreement may not be assigned or otherwise transferred by either party, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld. However, either party shall have the right to assign this Agreement, in whole or in part, to any successor of such party or successor of any business unit of such party, by way of merger or consolidation or the acquisition of all or a substantial amount of the assets of such party or of such business unit of such party, provided further, that such successor shall expressly assume all of the obligations and liabilities of such party under this Agreement.