

## **Times Microwave Systems, Inc.**

### **TERMS AND CONDITIONS OF A SALES ORDER**

#### **1. Acceptance:**

The acceptance of Buyer order is expressly limited to and made conditional upon the terms and conditions herein stated.

THE TERMS STATED HEREIN SHALL CONSTITUTE THE FINAL, COMPLETE AND EXCLUSIVE AGREEMENT OF THE PARTIES PERTAINING TO THIS SALE.

No course of prior dealings between the parties and no course of performance or usage of trade shall be relevant to explain any terms stated herein. No statement, promise, understanding, usage of trade, course of performance of dealing or acceptance of or acquiescence in any course of performance or dealing shall be effective to rescind, waive, modify or add to this agreement as set forth herein, or any term hereof, or any right or claim arising out of a breach of default by Buyer; unless such rescission, waiver, modification or addition is expressly approved by Seller in writing.

#### **2. RFQ Proposals:**

Quoted prices are based on existing conditions and costs, and are subject to adjustment by us, upward or downward, consistent with changes in material costs and wage levels. All currency is in US dollars unless specified otherwise.

#### **3. Payment and Delivery:**

Terms of sale are FCA TMS facility.

Unless otherwise specified herein, subject to approval by Seller of amount and Terms, Buyer shall make final payment of the purchase price not later than the thirtieth day after shipment (net 30 days). If Buyer delays shipment, payments are to be made as though shipment has been made as specified. Overdue payments will carry 18% per annum interest charges or the legal maximum rate, whichever is lower. Buyer shall pay Seller's collection or litigation expenses, including attorney fees.

If, in the judgment of Seller, the financial condition of Buyer at any time does not justify continuance of production or shipment on the terms of payment originally specified, Seller may, upon (10) days' notice, require full or partial payment in advance, regardless

of the payment terms originally specified. In the event of bankruptcy or insolvency of Buyer, Seller may cancel any order then outstanding and receive reimbursement for its cancellation charges.

#### **4. Responsibility and Title**

Buyer assumes all responsibility for and risk of loss of, or damage to, the product during shipment and upon delivery at Seller's shipping point, or FOB point specified in the contract, notwithstanding the fact that Seller may have selected the carrier.

Title to and right of possession of the product remains with Seller until payment of the purchase price in full. If payment is delayed, Buyer, if requested by Seller, shall execute, and deliver to Seller a security agreement or other documents sufficient to enable Seller to comply with applicable laws.

Buyer hereby authorizes Seller, or its assignee, where permitted by applicable state law, to sign and file financing statement in order to protect the security interest of Seller hereunder.

If Buyer causes a delay in contract completion, Buyer shall pay Seller's usual storage charges and the contract prices 30 days after receipt of Seller's notice that the items sold are ready for shipment. Risk of loss shall pass to Buyer as of the date Seller receives Buyer's postponement request.

Buyer is responsible for scheduling freight pickup within 5 business days of contractual delivery date or completion date upon notification from Seller of product completion, whichever is later. Seller reserves the right, at its sole option, to assess a holding fee to Buyer of 0.5% (the "Holding Fee") of invoice price per day, commencing upon the agreed upon promise date, up to the total value of the purchase order should Buyer fail to fulfill this obligation. The Holding Fee shall be set forth in the applicable invoice issued to Buyer and shall be paid by Buyer upon payment of such invoice according to the payment terms hereof.

The Buyer agrees that such Holding Fees, if assessed, are a reasonable pre-estimate of the damages Purchaser will suffer because of delay based on circumstances existing at the time the Order was established and are to be assessed as liquidated damages for such delay and not as a penalty.

Seller shall not be liable for any failure to perform due to any cause beyond its reasonable control and without its fault or negligence. Such causes include, but are not limited to: (1) acts of God or of the public enemy; (2) acts or failure of any government in either its sovereign or contractual capacity; (3) fires, floods, epidemics, pandemics, terrorism, quarantine restrictions, strikes, freight embargoes, nuclear incident, or any

other act or event beyond reasonable control and without the fault of either Party or its subcontractors; and (4) stop ship order issued by any qualifying authority under the U.S. Department of Defense's QPL program, provided that Buyer is diligently pursuing completion of any corrective action that such qualifying authority requires in order to lift such stop ship order..

## 5. Cancellation of Orders

Orders accepted by Seller are not subject to cancellation except with Seller written consent and upon terms which will indemnify Seller for all loss or damage. Buyer may be responsible for compensation for raw materials and/or product already purchased or assembled, up to the full value of the order.

## 6. Tolerance and Completion of Bulk Cable Order

Unless otherwise stated, orders will be considered complete when footage shipped is within 5% of quantity ordered.

Cable orders are subject to a 5% over-run or under-run and will be billed accordingly.

## 7. Claims

Goods returned without Seller written permission will not be accepted for credit. All returns must be received by TMS within 90 days of the return authorization disclosure, or the return will be cancelled.

## 8. Limited Warranty

Seller warrants the items ordered hereunder at the time of shipment to be free from defects in material, workmanship, and to conform to the contract specification. Seller's liability under this warranty shall terminate 12 months after the applicable products are delivered unless otherwise specified, for example in accordance with contract stipulations (The "Warranty Period").

To make a claim under this Warranty, notice of any defects shall be given to Seller in writing upon discovery, so long as such notice is within the Warranty Period and Seller shall promptly correct such defects by repair or replacement, at its option, without charge, either FOB Seller's plant or service in the field.

SPECIFICALLY EXCLUDED FROM THE TERMS OF THIS WARRANTY ARE DEFECTS OR NON-CONFORMANCE CAUSED BY AND RESULTING FROM IMPROPER APPLICATION, OPERATION, MISUSE, UNAUTHORIZED REPAIR, MAINTENANCE OR STORAGE OF THE PRODUCT.

ALSO EXCLUDED ARE ITEMS OF CHARACTERISTICALLY INDETERMINATE LIFE, SUCH AS BULBS, FUSES, ETC.

THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE, HEREOF. THIS WARRANTY CONSTITUTES SELLER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR NON-CONFORMING ITEMS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY (INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE).

## 9. Limited Seller Liability

Seller shall not have any liability of any kind under this contract unless Buyer gives Seller notice of its claim within 30 days after the date Buyer knows or should know of its claim and such notice is within the Warranty Period. IN NO EVENT SHALL THIS LIMITATION EXCEED ONE YEAR FROM THE DATE OF DELIVERY.

IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE COST OF REPAIR OR REPLACING SUCH DEFECTIVE ITEM AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES, HOWSOEVER CAUSED AND WHETHER OR NOT CAUSED BY SELLER'S NEGLIGENCE (INCLUDING LATE DELIVERY OR LATE PERFORMANCE). SELLER'S OBLIGATION TO REPAIR OR REPLACE PRODUCT (OR PERFORM SERVICES AGAIN) IN ACCORDANCE WITH WARRANTY SHALL BE BUYER'S EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY OR FOR NEGLIGENCE. IF SELLER FAILS TO REPAIR OR REPLACE (OR PERFORM SERVICES AGAIN) AS AFORESAID, SELLER'S ENTIRE LIABILITY TO BUYER HEREUNDER, WHETHER SUCH LIABILITY IS BASED UPON BREACH OF CONTRACT, TORT, VIOLATIONS OF LAW, OR ANY OTHER BASIS, SHALL NOT EXCEED THE REPAIR OR REPLACEMENT VALUE, WHICHEVER IS LOWER, OF THE DEFECTIVE ITEM OR SERVICE.

## 10. Buyer Liability

Buyer assumes all patent liability except for goods made under Seller patents, or patents under which Seller is licensed. Any charges which Seller is obligated to pay because of applicable taxes or royalties for use of patented structures or processes are included in quoted prices.

## 11. Taxes

<i>Document No:</i> <b>AS7.2-02</b>	Page 5 of 5	<i>Revision:</i> <b>A</b>
<i>Responsible Depts:</i> Finance / Legal, Sales, PM, Customer Service		
<i>Document Title:</i> <b>Terms and Conditions of a Sale</b>		

Federal or state taxes now or hereafter imposed affecting the production, treatment, manufacture, sales, delivery, transportation or proceeds of the products specified herein, shall be for the account of the Buyer, and if paid or required to be paid by the Seller the amount thereof shall be added to and become part of the price payable by the Buyer hereunder.

## 12. Statutory and Federal Laws

This contract shall be governed by and construed in accordance with the laws of the state of Connecticut.

## 13. Partial shipments

Partial shipments shall not be subject to rejection for defect in quantity and remittances with respect thereto, must be made in accordance with invoices rendered in connection therewith.

## REVISION HISTORY

<b>Revision:</b>	<b>Date:</b>	<b>CDC Number:</b>	<b>By:</b>
Orig. Rel.	May 27, 2020	54889	WL
A	May 4, 2022	61658	SK