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Microwave Solutions Inc.

SEP 13 2018

Purchase Order Terms and Conditions

TC-006581-840

Revision C

1. **Acceptance – Agreement:** Entire Agreement: Except as otherwise mutually agreed to in writing by both the party providing parts, supplies or services hereunder (“External Provider”) and Microwave Solutions, Inc. (“Buyer”), the following terms and conditions (these “Terms and Conditions”) set forth all of the terms of the purchase and sale of parts, supplies or services each as hereinafter defined between External Provider and Buyer (the “Contract”), set forth the exclusive remedies of the parties and supercede all prior agreements, offers, representations and negotiations between the parties to the extent they conflict or are in addition to the terms contained herein, this being intended as a final expression and complete and exclusive statement of the terms of the Contract. This order is Buyer’s offer to External Provider and becomes a binding contract, subject to the terms hereof, when accepted by acknowledgement or commencement of performance by External Provider. Buyer objects to all additions exceptions or changes to these terms, whether contained in any printed forms of External Provider or elsewhere, unless approved by Buyer in writing. To the extent there are any inconsistencies between these terms and those written on the face of this order, the latter control. These Terms and Conditions may not be varied except as specifically set forth in a written agreement with legal consideration subsequently signed by an authorized representative of Buyer.

2. Price, Payment and Acceptance:

Buyer's Inspection and Acceptance: Price for the parts, supplies or services and payment terms are specified on the purchase order and invoice. Price for parts, supplies or services shall include any and all taxes, tariffs or similar charges that may be imposed given the nature of the goods and services. External Provider shall box, crate or package as necessary for shipment without charge unless otherwise specified on this order. Buyer shall have no obligation for payment until Buyer's receipt of the parts, supplies or services, any required documentation (including shipping documentation and an accurate and complete invoice) and completion of agreed upon terms of payment. Payment for the parts, supplies or services delivered hereunder shall not constitute acceptance of such parts, supplies or services. Buyer shall have the right (but not the obligation) to inspect such goods and/or services and to reject any or all of said parts, supplies or services which are, in Buyer's judgment, defective or nonconforming. Parts, supplies or services rejected and parts, supplies or services supplied in excess of quantities called for in the purchase order may be returned to External Provider at External Provider's expense and, in addition to Buyer's other rights, Buyer may charge External Provider all expenses related to unpacking, examining, repacking and reshipping such goods. In the event the Buyer rejects parts, supplies or services or receives parts supplies or services whose defects or nonconformity is not apparent upon examination.

3. General Warranty:

External Provider expressly warrants that the parts, supplies or services furnished pursuant to the purchase order shall: a) conform to any specifications and statement(s) of work, as applicable; b) conform to the terms and conditions of the purchase order (including any referenced or attached documents); c) conform to applicable laws; d) conform to

appropriate industry standards; e) be new and free from defects in design, material and workmanship; f) be free of liens and encumbrances; g) be fit for their intended purpose and use; h) be merchantable; and i) not be adulterated or misbranded, at the time of delivery. External Provider's warranties shall run to Buyer, its successors, assigns and customers and users of parts, supplies or services sold by External Provider.

Acceptance or use of the parts, supplies or services furnished hereunder shall not affect External Provider's obligations under this paragraph, and such warranties shall survive acceptance and use.

4. Termination by Buyer

A) Without Cause. Buyer shall have the right to terminate the purchase order or any part by written notice at any time, and if such notice is provided, External Provider shall immediately stop all work. Buyer agrees to pay a termination charge equal to the direct out-of-pocket expenses previously incurred by External Provider prior to receipt of such notice plus reasonable overhead and profit. External Provider minimize costs to Buyer which includes, but is not limited to diverting labor, resources, raw materials or components to other projects or purchase orders.

Notwithstanding the foregoing, the parties acknowledge and agree that, in no circumstances, shall Buyer be charged for raw materials or components that it routinely sells to other buyers.

B) Termination for Cause. If fails to observe or comply with any of the instructions, terms, conditions, or warranties contained in the purchase order, or fails to provide Buyer, upon request, with reasonable assurance of future performance as requested, such failure(s) shall each be defaults allowing Buyer to terminate the purchase order for cause. In addition to any other rights in the purchase order, in the event of termination for a

cause, Buyer shall not be liable to External Provider for any amount, and External Provider shall be liable to Buyer for any and all damages sustained by reason of the causes which gave rise to the termination.

5. Confidentiality/Proprietary Information

External Provider shall consider all information furnished by Buyer to be Buyer's proprietary information and shall not disclose any such information to any other third party, or use such information itself for any purpose other than specified in the purchase order, unless External Provider obtains written permission from Buyer to do so. External Provider shall not advertise or publish the fact that Buyer has contracted to purchase parts, supplies or services from External Provider Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by External Provider to Buyer shall be deemed proprietary and External Provider shall have no right against Buyer except such rights that may exist under patent laws. All proprietary information shall be returned to Buyer upon request.

6. Intellectual Property Rights.

Unless expressly granted elsewhere, nothing contained in the purchase order shall be construed to grant External Provider a license or in any way give ownership to any Buyer-owned intellectual property, except that External Provider shall have access to such Buyer-owned intellectual property as required for External Provider to fulfill, and solely for the purpose of fulfilling, its contractual obligations under the purchase order. External Provider, as part of consideration for the purchase order and without further cost to Buyer, hereby grants and agrees to grant Buyer, and its assignees and customers, an irrevocable, worldwide, nonexclusive royalty-free right and license to use or sell the parts, supplies or services embodying any and all External Provider -owned intellectual property

rights. External Provider agrees, at its own expense, to defend any suit or action against Buyer or against those selling or using the parts, supplies or services covered by the purchase order for alleged infringement of intellectual property rights arising from the sale or use of such parts, supplies or services, and to indemnify and save Buyer and those selling or using such parts, supplies or services harmless from any damages, liabilities, claims, losses, and expenses (including attorney's fees) paid or incurred by Buyer in connection with any such suit or action, whether against Buyer or against those selling or using the parts, supplies or services covered by the purchase order; provided, however, that this indemnity shall not apply to any such damages, liabilities, claims, losses or expenses arising out of compliance by External Provider with specifications or statement(s) of work furnished by Buyer.

7. Work on Buyer's Premises

External Provider agrees that, while its personnel or agents are on Buyer's premises, such personnel or agents shall conform to all Buyer's work rules, safety regulations and its standard practices governing the behavior of its own employees. External Provider agrees to require such personnel and agents to take any required training and to work in a manner which complies with this paragraph and all applicable laws.

8. Buyer's Property

All special tools, dies, patterns, jigs, drawings, equipment and fixtures ("Tooling") supplied by Buyer or paid for by Buyer shall remain Buyer's property and External Provider agrees to comply promptly with all disposal and shipping instructions with respect to such Tooling. External Provider agrees, at External Provider's expense to maintain all Tooling in External Provider's possession which belongs to Buyer in first-class condition and repair and adequately insure against all damages and loss. External

Provider further agrees to indemnify Buyer for all damage or loss to such Tooling. External Provider shall prominently mark all Tooling "Owned by Microwave Solutions", if possible, given the type of Tooling and agrees not to remove such Tooling from External Provider's facility without Buyer's written permission.

9. Safety and Environmental Requirements

External Provider shall obtain all permits and abide by all applicable environmental and safety regulations from all federal, state and local regulatory authorities. In order for Buyer to properly discharge, use, store, handle, transport and dispose of the parts and supplies and to comply with applicable laws, External Provider shall also provide to Buyer, upon request, with any information about the characteristics, components or contents of the parts and supplies.

10. Indemnity and Insurance

External Provider shall defend, indemnify and hold harmless Buyer against any and all damages, claims or liabilities and expenses (including attorneys' fees) arising out of or resulting in any way from any defect in the parts, supplies or services purchased hereunder, or from any breach of the purchase order by External Provider or any act or omission of External Provider, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of External Provider. External Provider shall maintain general commercial liability, worker's compensation, and employer's liability insurance with such coverage and in such amounts as a reasonably prudent party would maintain to adequately protect Buyer against such damage, liabilities, claims, losses and expenses (including attorney's fees). External Provider agrees to submit certificates of insurance evidencing its insurance coverage when requested by Buyer.

11. Limitation on Buyer's Liability – Statute of Limitations

In no event shall the Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from the purchase order or from the performance or breach thereof shall not exceed the price allocable to the parts, supplies and services which give rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods and/or services delivered hereunder must be commenced within one year after the cause of action has occurred.

12. Equal Opportunity/Affirmative Action

The parties hereby incorporate the requirements of 41 CFR Section 60-1.4(a) (7), 41 CFR 60-300.5, 41 CFR 60-741.5, and 29 CFR Part 471, Appendix A to Subpart A, if applicable.

14. Import/Export

a. External Provider agrees to comply with applicable U.S. control laws and regulations, specifically including but not limited to the requirements of the Arms Export Control Act, 22, U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 E.T. Seq; and the Export Administration Act, 50 U.S.C app. 2401-2420, including the requirement or obtaining any export license or agreement, if applicable. Without limiting the foregoing, External Provider agrees that it will not transfer any export controlled item, data, or services to include transfer to foreign persons employed by or associated with or under contract to External Provider and to External Provider's lower-tier External Providers, without the authority of an export license agreement or applicable exemption or exception. With respect to certain import and export laws, External Provider shall provide to Buyer, upon request, with any

information that Buyer requests to obtain an export license, classify a product for import (harmonized tariff schedule number), classify a product for export (Export Control Classification Number "ECCN" and the Schedule B number) or to respond to any government inquiry.

b. External Provider agrees to notify Microwave Solutions if any deliverable under this Contact is restricted by export control laws or regulations.

c. External Provider shall immediately notify Microwave Solutions' Procurement Representative if External Provider is or becomes listed in any Denial Parties List or if External Provider's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

d. If External Provider is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, External Provider represents that it is registered with the Office of Defense Trade Controls, as required by the International Traffic in Arms Regulation (ITAR), and it maintains an effective export/import compliance program in accordance with the International Traffic in Arms Regulation ITAR.

e. External Provider shall be responsible for all losses, costs, claims, causes for action, damages, liabilities and expense, including attorney's fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of External Provider, its officers, employees, agents, External Providers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

15. Priority Rating

If so identified, this Contract is a "rated order" certified for national defense use, and External Provider shall follow all the requirements of the Defense Priorities and Allocations System (DPAS) Regulation (15 C.F.R. Part 700).

Under DPAS regulations, if this Contract supports the U.S. Government and, is DX or DO Rated, the External Provider must acknowledge acceptance of DX-Rated orders within ten (10) days, and DO Rated orders within fifteen (15) days of receipt hereof Commencement of performance of the Work called for by this Contract in the absence of External Provider's written acknowledgement thereof shall be deemed acceptance of this Contract as written.

16. Counterfeit Parts Prevention Requirements

In order to minimize the risk of procuring fraudulent/counterfeit product the supplier shall have a counterfeit parts plan to ensure it does not receive counterfeit parts into inventory, use them in manufacturing, or inadvertently sell them to other parties. The plan shall meet the intent of AS5553 for electrical, electronic, electro-mechanical and electro-optical (EEE) parts, and/or AS6174 for material parts, assemblies or other procured items not covered by AS5553. Only new and authentic materials are to be used in the products delivered to Microwave Solutions Inc. No counterfeit or suspect counterfeit parts are to be contained within the delivered product. Parts shall be purchased directly from the OCM/OEM, or through the OCM/OEMS franchised distributors. Brokers shall not be used without written consent from Microwave Solutions Inc. If suspect/counterfeit parts are furnished under this purchase order and found in any of the goods delivered hereunder, buyer will impound such items. The seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the buyer and seller shall be liable for all costs relating to the removal and replacement of said parts. Buyer reserves all contractual rights and

remedies to address grievances and detrimental impacts caused by suspect/counterfeit parts. . Buyer reserves all contractual rights and remedies to address grievances and detrimental impacts caused by suspect/counterfeit parts.

For machined parts:

Per standard procedure of flow down of information, machine shop shall provide a C of C of the material from the supplier stating the lot/heat code. Machine shop shall state the heat/lot code of the material on their C of C for tractability.

All non-electrical standard parts, like fasteners, nuts, washers, springs, O-rings, inserts, and pins, must have a C of C from the approved distributor stating the name of the source or manufacturer.

17. Miscellaneous

Assignments and Subcontracting: No part of the purchase order may be assigned or subcontracted to third parties without the prior written approval of Buyer. Notwithstanding any written approval granted by Buyer, External Provider shall be liable for any acts or omissions of any subcontractor or assignee to the same extent as if they were the acts or omissions of External Provider.

Setoff: All claims for money due or to become due from Buyer shall be subject to deduction or set off by Buyer.

Waiver: Buyer's failure or delay to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any other breach, terms or conditions, whether of the same or similar type.

Remedies: Buyer's remedies shall be cumulative and remedies herein specified do not exclude any remedies allowed by law or in equity.

18. Force Majeure

Neither Buyer nor External Provider shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to (a.) acts of God, war, riot embargos, acts civil or military authorities, fire, flood epidemics or unusually severe weather affecting either party; or (b.) similar causes beyond their control and which are not foreseeable or causes beyond the reasonable control of their subcontractors which are not foreseeable.

19. Governing Law/Venue

General: External Provider shall comply with, and give all notices required by, applicable laws bearing on the performance of the purchase order. External Provider shall notify Buyer if it becomes aware of any non-compliance by it of any applicable laws and shall take all actions necessary to become compliant.

The purchase order shall be construed in accordance with the laws of the State of California, without regard to conflicts of laws principles. Both parties agree that venue for any actions arising under the purchase order shall be a court of competent jurisdiction in San Diego, California, and both parties hereby irrevocably submit to the personal jurisdiction of such courts.

20. Independent Contractor

External Provider and Buyer intend that an independent relationship shall be created by this agreement and nothing herein shall be construed as creating an employer/employee relationship, partnership, joint venture, or concerted action.

21. Survivability

All paragraphs of the purchase order and any referenced or attached documents which by their nature should survive termination, but not limited to paragraphs 5, 6, 8,9, 10, 12, 14, 15, 16, 17, & 21, and shall bind the parties and their legal representatives, successors, and assigns.

22. Severability

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

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