



TERMS & CONDITIONS OF SALE

1. General Conditions

These terms and conditions ("**Terms**") shall apply to the purchase of products and/or related ancillary services ("**Goods**") by a purchaser (the "**Buyer**") from Marki Microwave, Inc. ("**MMI**"), and constitute a material part of the bargain. No other 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.

a) MMI desires to provide its customers with prompt and efficient service. Accordingly, Goods furnished by MMI hereunder are sold solely and exclusively on the Terms stated herein. 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 AND MMI HEREBY GIVES NOTICE OF OBJECTION TO ANY SUCH ADDITIONAL OR CONFLICTING PURPORTED TERMS OR CONDITIONS.

b) MMI's performance of any contract of sale with Buyer is expressly conditional on Buyer's acceptance of these Terms and Conditions of Sale, unless otherwise expressly agreed in writing by Seller. In the absence of such agreement, commencement of performance and or delivery of Goods shall be for Buyer's convenience only and shall not be deemed or construed to be acceptance of terms and conditions expressed in any Buyer Documents. Buyer's acceptance of any portion of Goods shipped by MMI, or payment of any portion of amounts due from Buyer to MMI hereunder, will be conclusively deemed Buyer's acceptance of these Terms.

c) All orders are subject to credit approval and final acceptance by MMI.

1. Shipping and Delivery

a) Unless otherwise agreed in a written agreement signed by MMI, delivery of Goods shall be made Ex Works (INCOTERMS 2020), at which time the title and risk of loss shall pass to the Buyer. Buyer will bear all shipping and insurance costs. If Buyer's instructions call for freight-collect shipment the Buyer shall provide an account number for billing purposes. If shipping costs are advanced by MMI (in

MMI's sole and exclusive discretion), then any such advanced costs will be added as a line item to the invoice and paid by Buyer.

b) Delivery dates will be scheduled by MMI subject to MMI's then-current lead times. Delivery dates are approximate, MMI reserves the right to allocate production and deliveries among its various customers, and MMI will not be liable for any loss, expense, or damage caused by delays in delivery or non-performance due to causes beyond its reasonable control. Unless the parties mutually agree otherwise, partial shipments are allowed.

2. Packing; Marking

MMI shall pack, mark, and ship Goods using industry standard commercial practices for protection and shipping. Commercially reasonable effort will be made to accommodate Buyer's prescribed shipping requirements.

3. Delivery Acceptance; Inspections

a) Buyer may inspect shipments of Goods for any non-conformance of delivery with respect to the items and quantities as agreed in the Buyer order and/or MMI offer, as applicable, and shall reasonably promptly accept or reject the delivery in writing, providing reasons for any rejection. Acceptance is deemed to occur within 10 calendar days of delivery if not earlier rejected in writing by Buyer. Any express warranty provided herein will survive delivery acceptance. If Buyer timely provides written notice of rejection of a delivery for non-conformance, then Buyer shall promptly return rejected non-conforming deliveries to MMI, return shipping at MMI's expense, for refund of the purchase price paid for non-conforming deliveries. Services performed by MMI, if applicable, will be deemed accepted by Buyer upon completion by MMI, unless otherwise agreed in a written statement of work signed by the parties.

b) Source inspections by Buyer or Buyer's customer must be mutually agreed in advance in writing and will be subject to limitations on time and manner to minimize disruption to MMI operations, and subject to MMI safety and security conditions. Buyer shall have no right of access to any MMI facility except as expressly authorized in advance by MMI. Buyer shall indemnify and hold harmless MMI from any and all suits, damages, and expenses of

Buyer, its agent or its customer resulting from personal injury including death or loss or damage of property occurring during, or in connection with, any visit to any facility of MMI.

4. MMI Product Changes; Discontinuance

a) Minor variations that do not affect form or fit, nor adversely affect performance of a product, or 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 of the Goods.

b) MMI reserves the right to discontinue manufacture or change specifications of products without prior notice, *provided however*, MMI shall provide 180 days' advance notice to a Buyer if MMI will discontinue manufacture of products, or make changes to products that affect the form or fit of Goods, or adversely affect the performance of Goods, that are already committed in a binding contract to be manufactured or supplied by MMI to such Buyer.

c) MMI reserves the right to make product improvements without any obligation or responsibility to incorporate such changes in Goods previously manufactured or delivered.

5. Buyer Order Rescheduling; Changes; Cancellation

a) *Order Cancellations/Changes*: Except to the extent required by applicable law or regulation, if any, or to the extent MMI agrees otherwise in a signed writing in its sole and exclusive discretion, all orders for Goods are non-changeable, non-cancellable, and non-refundable, *provided however*, orders for standard commercial off the shelf MMIC Goods up to \$10,000 in order value (or aggregate value in a series of related transactions/orders) may be cancelled up to 60-days prior to the planned shipment date without penalty. If MMI, in its sole and exclusive discretion as set forth above, consents to cancel, in whole or in part, an otherwise non-cancellable/non-changeable order, then Buyer shall pay to MMI the greater of MMI's actual costs incurred for the cancelled portion of the order, or a 25% restocking charge.

b) *Order Rescheduling*: Notwithstanding the preceding, delivery dates for Goods may be rescheduled upon Buyer's written request up a maximum of two times without penalty not to exceed 60 days in total, conditioned upon such change being made more than 45 days prior to

the then-scheduled shipment date. No shipment may be rescheduled within 45 days of the then-scheduled ship date.

c) *Service Order Changes*: Except as may be set forth otherwise in a statement of work signed by the parties, orders for services may only be changed or cancelled by mutual consent of the parties.

6. 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: i) prior to revision of those prices; or ii) 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, specifications, and shipment arrangements and, are subject to revision at any time prior to shipment if the quantity, specifications, or shipment arrangements are 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.

7. Payment Terms; Taxes

a) MMI shall invoice upon shipment of Goods, or upon completion of performance of services unless otherwise agreed in a signed statement of work.

b) Unless otherwise stated by MMI, prices do not include sales, use, excise, VAT, or similar taxes, nor any import or export duties or withholding (collectively, "**Taxes**"). Such Taxes will be borne solely by the Buyer, provided however, that if MMI is required by law to collect and pay any such taxes, then such taxes will be added to the Invoice as a separate line item which Buyer shall be responsible to pay to MMI in addition to the price for the delivered Goods.

c) 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 45 days past due 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.

d) MMI reserves the right to modify credit terms, to require COD payment, or to require payment in advance.

e) Goods held for the Buyer beyond a reasonable period shall be at the risk of the Buyer. There is no discount for advance payment.

8. Tools; Property Rights

Unless, and to the extent, expressly agreed in a writing signed by MMI:

a) MMI or its licensors retain all right, title, and interest to all copyright, trademark, patent, trade secret, or other intellectual property rights embodied in the MMI Goods and service deliverables, including but not limited to all designs, specifications, schematics, drawings, code, and documentation.

b) MMI retains all right, title, and interest to, and possession of, any models, drawings, composites, patterns, dies, molds, masks, schematics, bread boards, jigs, fixtures and tools made for or obtained from sources other than Buyer for the furnishing of Goods or services hereunder. Tools, dies, and other equipment furnished to MMI by Buyer will be at held at Buyer's risk.

c) All material developed from services provided by MMI including but not limited to customized Goods, as well as the design, development, or manufacturing work performed by MMI for Buyer, will not be a work-made-for-hire, and will not convey to Buyer any copyright, trademark, patent, trade secret, or other intellectual property rights in the service or Goods, nor any interest in all or any portion of the mask works relating to the Goods. All such rights will remain the property of MMI and its licensors. No license of any type, express or implied, is granted to Buyer with respect to such rights or with respect to any trademark of MMI or its affiliated companies.

d) If MMI agrees, in its sole and exclusive discretion, to provide customized Goods exclusively to Buyer, MMI will retain ownership and possession of all associated mask works. In such circumstances, masks entirely unique to Buyer's design and based upon Buyer's confidential or proprietary information will be held by MMI for the exclusive use of Buyer, and MMI shall not use such mask for any third-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 may dispose of such mask with no further obligation to Buyer.

9. Warranty

a) MMI warrants to the Buyer that all MMI Goods will be 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, and will conform to MMI's published specification and/or data sheet in effect upon the shipment date. MMI warrants for a period of ninety (90) days from completion that its services are performed in workmanlike manner conforming to generally accepted industry standards and practices.

b) 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, or reperformance of defective services. In no event shall MMI's liability for any breach of warranty exceed the net selling price of the defective Goods or services.

c) MMI HAS NO OBLIGATION OR RESPONSIBILITY FOR GOODS WHICH HAVE BEEN DAMAGED OR ALTERED IN ANY WAY BY OTHER THAN MMI OR OTHERS ON ITS BEHALF, AND ANY SUCH ALTERATION WILL INVALIDATE THE ABOVE WARRANTY. Additionally, MMI makes no warranty of any kind, and accepts no liability for Non-Production Goods (as defined below), which are supplied "as-is."

d) THE FOREGOING IS THE ONLY WARRANTY MADE BY MMI AND TO THE GREATEST EXTENT ALLOWED IN LAW MMI HEREBY DISCLAIMS ALL OTHER CONDITIONS AND 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 GOODS OR SERVICES PROVIDED UNDER THESE TERMS.

10. Warranty Claim Procedures

a) All claims of failed or defective Goods or services must be in writing and received by MMI within the specified warranty period. For defective Goods 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 or replacement. MMI will pay return shipping charges for replacement or repaired Goods, but not for Goods returned which are found not to be in warranty or to have sustained damage in the field. MMI will accept Goods for warranty claim verification only when returned by Buyer in a condition that allows for suitable testing by MMI. Election between 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, MMI may provide a price quotation for repair or replacement 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, then MMI may charge a reasonable amount for its evaluation. The Buyer will not recover from MMI by offset, deduction, or otherwise, the price of any Goods returned to MMI under this warranty.

11. 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 THE PURCHASE PRICE DUE AT ANY TIME WITHIN THE APPLICABLE STATUTE OF LIMITATIONS. IN NO EVENT SHALL EITHER PARTY'S TOTAL LIABILITY EXCEED THE AGREED PURCHASE AMOUNT FOR THE GOODS OR SERVICES UPON WHICH LIABILITY IS BASED.

b) NEITHER PARTY, INCLUDING ITS RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, AND AGENTS WILL BE LIABLE FOR ANY LOST PROFITS, LOST REVENUES, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF USE OF THE GOODS OR ANY ASSOCIATED EQUIPMENT, COST OF SUBSTITUTE EQUIPMENT OR PRODUCTS, DOWNTIME COSTS, 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.

12. Limits on Use of Goods

a) *Limited Non-Compete.* Buyer agrees it will not use, directly or indirectly, Goods supplied by MMI in bare die form 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 Goods on MMI's then-current standard goods list or website.

b) *Life-Critical Applications.* Goods sold by MMI are not intended nor authorized to be used in life support equipment or for applications in which the failure or malfunction of the goods would create a situation in which personal injury or death is likely to occur. Any such use of Goods supplied by MMI is at the sole risk of Buyer, and Buyer agrees to indemnify and defend MMI against and hold MMI harmless from all damages, costs and expenses, including without limitation attorney fees and costs relating to any claim, demand, cause of action, lawsuit or threatened lawsuit, or judgment arising out of such use.

c) *Weapons of Mass Destruction.* Buyer shall not use the Goods in relation to nuclear, biological or chemical weapons or systems intended for delivering same, or in the development of any weapons of mass destruction.

d) *Non-Production Goods.* If Buyer orders an evaluation board or kit, a pre-production sample, or a no-cost sample ("**Non-Production Goods**"), Buyer shall use such Non-Production Goods for evaluation purposes only, and may not itself, or use permit any other party to, use such Non-Production Goods for any other purpose. Non-Production Goods are provided "as is" and there are no warranties or representations of any kind, express or implied. In no event will MMI be liable for any damages resulting from Buyer's possession or use of Non-Production Goods.

e) *No Reverse Engineering.* Buyer shall not, nor authorize any third party to, deconstruct, reverse engineer, or decompile any Goods supplied by MMI hereunder without MMI's express written consent.

13. IP Indemnity

a) MMI agrees to defend, at its own expense, any claims made against Buyer by a third party unrelated to

Buyer (“**Claimant**”) alleging that the Goods as sold by MMI to Buyer under these Terms directly infringe a United States patent, United States trademark, United States copyright, or United States trade secret (“**IP**”). MMI also agrees to indemnify Buyer against actual damages for such direct infringement which are finally awarded against Buyer that are finally awarded to a third party by a court of competent jurisdiction, or agreed to in a settlement approved by MMI in writing.

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. MMI shall have no responsibility for any settlement or compromise made without its prior written consent.

c) MMI shall have no obligations under subsection ‘a’, above, with respect to any claim that would not have arisen, but for: (i) 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) modifications or additions made to the Goods by Buyer or any third party not under the direction or control of MMI; (iii) the use or combination of the Goods with any other material, part, structure, subassembly, apparatus, external circuitry, software or other external elements not provided by or specified by MMI; (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; (v) such claim is otherwise attributable to any act or omission on the part of Buyer; or (vi) the use of the Goods after Buyer has received notice of such infringement or other violation, and MMI has offered a replacement, modification or refund therefor. Buyer shall indemnify and hold MMI and its suppliers harmless against any expense or liability from claims of infringement of any IP not indemnified by MMI and 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, at its sole expense and election, to: (i) to procure

for Buyer the right to use the Goods for the use contemplated by MMI and Buyer in making these Terms; (ii) to modify the Goods 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 Goods and reimburse Buyer for the purchase price paid thereof.

e) THE FOREGOING STATES MMI’S SOLE EXCLUSIVE OBLIGATION WITH RESPECT TO CLAIMS OF INFRINGEMENT OF PROPRIETARY RIGHTS OF ANY KIND, AND IS IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE INDEMNITY IN THIS SECTION SHALL NOT APPLY TO ANY NON-PRODUCTION GOODS.

14. Miscellaneous

a) *Compliance with Laws; Export Control.* Both parties agree to comply with all applicable laws and regulations regarding their performance of their respective obligations hereunder and Buyer’s purchase and use of MMI’s Goods and services supplied hereunder. Without limiting the foregoing, the parties agree: (i) to comply with all applicable export control laws and regulations, and not to export, reexport, or transfer the Goods or related technical data in violation of such laws or regulations, including but not limited to, the U.S. International Traffic in Arms Regulation (ITAR), the U.S. Export Administration Regulations (EAR), the sanction regimes of the U.S. Department of Treasury’s Office of Foreign Assets Control (OFAC) or other U.S. Government departments or agencies, and any other export control laws, rules, or regulations applicable in Buyer’s location; and (ii) to comply with all applicable commercial and public anti-bribery and anti-corruption laws, including but not limited to the U.S. Foreign Corrupt Practices 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, damages, liabilities, settlements, and expenses (including reasonable attorneys’ fees), arising from any act or omission of Buyer, its officers, employees, or agents in breach of its obligations under this subsection.

b) *U.S. Government Contracts.* If Buyer’s purchase order indicates by contract number that it is placed under a U.S. Government contract, then: i) MMI certifies, to the best of its knowledge and belief, that neither MMI nor any of its principals are debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts

by any federal agency; ii) MMI acknowledges and accepts only such Federal Acquisition Regulation (“**FAR**”) and Defense Federal Acquisition Regulations Supplement (“**DFARS**”) clauses that the regulations themselves mandate be flowed-down to a party in MMI’s position, including FAR 52.244-6, subject to all relevant limitations, including but not limited to inapplicability of such FAR or DFARS due to dollar-value thresholds, the nature of the Goods as commercial or COTS, or other limitations as stated in the prescribed clause (“**Inapplicable Clauses**”), and such Inapplicable Clauses will be deemed by all parties hereto to be of no force and effect, without the need to remove such inapplicable clauses from a Buyer order reference. Any other flow down requirements are expressly rejected unless reviewed and accepted in writing by MMI. MMI retains proprietary rights in all technical data provided under such contract to the fullest extent permitted under the FAR and DFAR as it relates to the sale of Commercial Items. Neither the U.S. Government nor any higher-tier contractor under a U.S. Government contract receives any rights in technical data beyond the rights provided to all commercial customers under these terms and conditions, except that MMI grants to the U.S. Government the minimum additional rights required under the narrowest applicable provisions of the FAR or DFARS. Except as expressly agreed in a signed writing in advance, MMI will not provide certified cost and pricing data and therefore rejects any Cost Accounting Standards, defective pricing, or audit requirements.

c) *Confidentiality; Technical Data.* MMI has no obligation to hold information received from Buyer in confidence unless the information is covered by a separate signed Non-Disclosure Agreement, *provided however*, neither party will publicize the existence or substance of orders under these terms without the prior written consent of the other. Except as may be set forth otherwise with respect to a deliverable under a written and signed Statement of Work, any technical information or data offered by MMI in connection with the sale of Goods is an accommodation to Buyer without charge and Buyer waives any claim against MMI and releases MMI from any and all liability arising from Buyer’s reliance upon such data.

d) *Force Majeure.* MMI’s performance is subject to all contingencies beyond MMI’s reasonable control or beyond the control of MMI’s suppliers, including, but not limited to, strikes, labor disputes, floods, extreme weather, civil commotion, war, riot, pandemics, 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 Goods by customs authorities, or other circumstances beyond MMI’s reasonable control 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 its obligations hereunder in a reasonably restricted or modified manner; (b) perform its obligations fully but delayed by a reasonable time after the causes for nonperformance or delay have terminated; or (c) cancel affected order and refund any purchase price paid.

e) *Governing Law; Disputes.* These Terms shall be governed in accordance with the substantive laws of the State of California without regard to its conflict of law rules, and without application of the U.N. Convention on Contracts for the International Sale of Goods. The exclusive forum for the resolution of any disputes hereunder shall be: i) for a Buyer with no material operations within the United States, by binding arbitration, to be held in San Jose, California, in English, before three arbitrators, administered by JAMS pursuant to its International Arbitration Rules and Procedures; or ii) for all other Buyers, in California State or Federal courts in the County of Santa Clara, California, in English. The parties consent to the exclusive jurisdiction set forth above. Judgment on any Award may be entered in any court of competent jurisdiction.

f) *Assignment.* Neither party may assign its rights or obligations hereunder without the consent of the other party, *provided however*, that without the consent of Buyer, MMI may assign its rights and obligations to any affiliate of MMI or successor-in-interest to MMI’s business.

g) *No Third-Party Beneficiaries.* These Terms 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 third party.

h) *Waiver.* No waiver of any provision of these Terms shall be effective, except pursuant to a written instrument signed by the party making such waiver. Any waiver shall be effective only in the specific instance and for the specific purpose given and will not constitute an ongoing waiver.

i) *Severance.* In the event any provisions hereof are found invalid or unenforceable the remainder of these Terms shall remain valid and enforceable to the greatest extent possible.

[End of Terms]