

## **1. SCOPE**

All products and services offered for sale by Kratos Microwave, Inc. (hereinafter "Seller"), are sold subject to the terms and conditions stated herein (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. This Agreement supersedes any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Seller expressly rejects Buyer's general terms and conditions of purchase, and fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions or serve to modify or amend these Terms. Seller's performance shall not constitute acceptance of Buyer's additional or inconsistent terms and conditions. Buyer's acceptance of the products ordered hereunder shall constitute acceptance by Buyer of the terms and conditions contained herein.

## **2. INTEGRATION**

Personnel of Seller are not authorized to make warranties about the products described in this agreement. Seller's employees' ORAL STATEMENTS DO NOT CONSTITUTE WARRANTIES, shall not be relied upon by the Buyer, and are not part of the agreement of sale. The entire agreement is embodied in this writing and NO OTHER WARRANTIES are given beyond those set forth herein. This writing constitutes the final expression of the parties' agreement, and it is a complete and exclusive statement of the terms of the agreement. Any modification of the terms herein shall be effective only when embodied in a written agreement signed by the party to be charged.

## **3. LIMITED WARRANTY**

SELLER WARRANTS THAT THE PRODUCTS SOLD HEREUNDER WILL BE IN ACCORDANCE WITH THE WRITTEN SPECIFICATIONS, WILL BE THE KIND AND QUALITY DESCRIBED IN THE AGREEMENT AND WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP, UNDER NORMAL USE AND SERVICE WHEN CORRECTLY INSTALLED AND MAINTAINED, FOR A PERIOD OF ONE YEAR FROM THE DATE OF SHIPMENT.

Seller's liability is limited solely (at Seller's discretion) to replacing, repairing or issuing credit for products claimed to be defective during the warranty period. In the event

that any products become defective during the warranty period, Buyer shall (A) notify Seller promptly in writing of any claims and (B) shall provide Seller with an opportunity to inspect and test the product claimed to be defective. In no event shall Seller be liable for any defective products if examination discloses that the defective condition of such products was caused by misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or negligence in use, storage, transportation or handling. The warranties under this section do not apply where the products have been: (i) subjected to abuse, misuse, neglect, negligence, accident, abnormal physical stress or environmental conditions, use contrary to any instructions issued by Seller, or improper testing, installation, storage, handling, repair, or maintenance; (ii) reconstructed, repaired, or altered by anyone other than Seller or its authorized representative; or (iii) used with any third-party product, hardware, or product that has not been previously approved in writing by Seller.

THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTY OF QUALITY, WHETHER EXPRESS OR IMPLIED.

## **4. WARRANTY DISCLAIMER**

WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN Section 3, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION, ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE;; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER INDIVIDUAL OR ENTITY ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN Section 3 OF THIS AGREEMENT.

## **5. LIMITATION ON LIABILITY FOR CONSEQUENTIAL DAMAGES RESULTING FROM PRODUCT MALFUNCTION**

In the event that a product malfunction leads to damages or injuries to the product, to Buyer's business, to the end user's business, to the other equipment, to a factory or place of business, or to the employees or other persons, Seller's liability shall be limited solely to repair or replacement of parts of the product under Paragraph 3

above if the application warranty period has not expired. If such warranty period has expired, Seller shall not be liable for such repair or replacement of parts of the product, provided, however, that if a court of competent jurisdiction shall find as a matter of law that any foregoing clause of this paragraph is unenforceable, it is agreed that Seller's liability shall be limited solely to a U.S. dollar amount equal to the cost of the malfunctioning product, less freight and insurance if included in the invoice price, and less and depreciation deductions or investment tax credits taken by Buyer or another purchaser or end user with regard to such product. The remedies provided for herein shall be exclusive and shall be Buyer's sole remedies.

- a) In no event shall seller or any of its representatives be liable for consequential, indirect, incidental, special, exemplary, punitive, or enhanced damages, lost profits or revenues or diminution in value, arising out of or relating to this agreement, regardless of (a) whether such damages were foreseeable, (b) whether seller was advised of the possibility of such damages, and (c) the legal or equitable theory (contract, tort, or otherwise) upon which the claim is based.
- b) Seller's aggregate liability arising out of or related to this agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, shall not exceed the total of the amounts paid to seller pursuant to this agreement in the one year period preceding the event giving rise to the claim/for such order.

## **6. SHIPMENTS**

Passage of Title and Liability for Loss. Products shall be shipped F.O.B. Seller's facility, San Jose, California. Title to the products and liability and risk for loss or damage in transit or thereafter shall pass to Buyer upon Seller's delivery of the products to a common carrier for shipment to Buyer. Shipping dates are approximate, and Seller reserves the right to make deliveries of product in installments and the contract shall be severable as to each such installment. Buyer shall give Seller notice within thirty (30) days after delivery of any incomplete deliveries or deliveries of defective products. The revocation of acceptance by Buyer must also be within thirty (30) days after the initial delivery of the products to the Buyer. Seller will promptly undertake to remedy the same in such manner as may be appropriate. No products shall be returned to Seller without Seller's prior authorization.

## **7. FORCE MAJEURE**

The seller will make reasonable efforts to meet any delivery date(s) quoted in the agreement. However, Seller will not be liable for its failure to meet any quoted delivery date(s) or for any delay in performance hereunder due to unforeseen circumstances or due to causes beyond its control. Examples of such causes include, without limitation, acts of God, export license, wars, riots, embargoes, acts of civil or military authorities, fires, floods, epidemics/pandemics, accidents, strikes, transportation delays or shortages, inability to obtain materials or supplies, excessive demand for products over available supply, interruption for any reason in the manufacture of products by Seller's suppliers, or any other causes not within Seller's control whether of the class of causes hereinbefore enumerated or not. Where only part of Seller's capacity to perform is excused under this condition, Seller shall attempt to allocate deliveries among the various customers in a commercially fair and reasonable manner. Where such an allocation has been made, reasonable notice of the estimated quote available to Buyer shall be given.

## **8. TERMS AND METHOD OF PAYMENT**

The terms of payment of all invoices shall be as follows: (a) on all sales to customers within the United States and Canada, the terms are net thirty (30) days from the date of the invoice, and (b) on all sales to customers and or representatives/distributors outside the United States and Canada, the terms are, unless otherwise agreed to in writing, payment by irrevocable letter of credit in a form satisfactory to Seller and issued by a bank satisfactory to Seller payable to Seller in United States funds upon the product being released from customs at Buyer's country. Past due balances may be subject to a monthly service charge of one and one-half percent (1½%) of the balance past due. No discounts are authorized. If deliveries are made in installments, each installment shall be separately invoiced and paid for when due without regard to other deliveries. If Buyer's financial conditions or other circumstances do not warrant shipment on the terms originally specified in any contract made hereunder, Seller may at any time limit (in Seller's sole discretion) or cancel the credit of Buyer as to time and amount and may demand payment in cash for delivery of any part of the product. On any order on which credit is not extended by Seller, shipment or delivery shall be made at Seller's election as follows: cash with order (in whole or part), or a letter of credit in a format acceptable to Seller. The net invoice price shall be payable in U. S. funds. Buyer shall reimburse Seller for all costs incurred in collecting any late

payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any products if Buyer fails to pay any amounts when due hereunder and such failure continues for 15 days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller.

## **9. TERMINATION**

In addition to any remedies that may be provided under these terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

## **10. COMPLIANCE WITH APPLICABLE LAW; EXPORT CONTROL**

Buyer shall at all times comply with all laws applicable to this Agreement, Buyer's performance of its obligations hereunder, and Buyer's use of the products. Without limiting the generality of the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the purchase or use of the products and (b) not engage in any activity or transaction involving the products, by way of shipment, use, or otherwise, that violates any law.

These commodities and technologies were developed in the United States of America or is the resultant product of U.S. technology. All applicable U.S. export laws and regulations apply to its use and or distribution. Export and or Re-export of these commodities require appropriate license authority from the U.S. government. Diversion contrary to U.S. law is prohibited. Each party hereby agrees that it will comply fully with all applicable export control laws, rules, regulations, and sanctions, such as those implemented by the U.S. Government (e.g., the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), and Office of Foreign

Assets Control (OFAC) Sanctions, and other government authorities (collectively, "Trade Control Laws") as they apply to the products sold and information that may be shared in relation to this Agreement. The parties agree that technical data or technology (i.e., export controlled information) subject to the Trade Control Laws will not be disclosed, transferred, or exported, including to any affiliate, foreign national employee, supplier, or sub-tier supplier, regardless of location, without valid export authorization or other written government approval as required. This paragraph will survive expiration or termination of this Agreement. Kratos Microwave, Inc. reserves the right to request an end use statement from the purchaser. Purchaser shall indemnify and hold Kratos Microwave, Inc. harmless from and against any and all; claims, liabilities and expenses resulting from purchaser's failure to comply with U.S. export regulations.

## **11. TAXES**

All prices quoted or accepted by Seller are exclusive of federal, state and local excise, sales, use and similar taxes and all export duties and other export costs. Such taxes, when applicable to sales or to the product, will appear as separated additional items on the invoice, or in lieu thereof, the Buyer shall provide the Seller with a properly executed tax exemption certificate prior to delivery. Any and all of the foregoing taxes and export duties and costs shall be borne by the Buyer.

## **12. CONFIDENTIAL INFORMATION**

All non-public, confidential, or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this section. This section does not apply to information that is: (a) in the public domain through no breach by Buyer; (b) lawfully known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

### **13. APPLICABLE LAW**

The sale of the products and all matters relating thereof (including the terms and conditions hereof), shall be governed by and construed in accordance with the laws of the State of California.

### **14. RELATIONSHIPS OF THE PARTIES**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

### **15. MISCELLANEOUS**

Buyer shall not assign this order or any interest therein, or any rights hereunder without prior written consent of the Seller. This Agreement may only be amended or modified in a writing which specifically states that it amends these terms and is signed by an authorized representative of each party. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement by Seller operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege here under by Seller precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege by Seller. The headings contained in these terms and conditions are for convenience of reference only and shall in no way define or limit the provisions hereof. If any term or provision of this Agreement is determined to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.