



Creators of Custom Microwave-Electronic Devices

WERBEL MICROWAVE LLC

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TERMS AND CONDITIONS OF SALE

ALL QUOTATIONS ARE OFFERED AND ALL PURCHASE ORDERS ARE ACCEPTED BY SELLER SUBJECT ONLY TO THESE TERMS AND CONDITIONS.

1. DEFINITIONS

“Buyer” means the entity to which Seller is selling Products or Services under a Contract.

“Contract” means the agreement between Buyer and Seller governing the sale of Products and/or Services by Seller to Buyer. These Terms and Conditions, the Quotation (if one is issued by Seller), any purchase order acknowledgement (if one is issued by Seller), and Buyer’s purchase order (except to the extent that it conflicts with these Terms and Conditions, the Quotation, and/or the order acknowledgement) constitute the Contract.

“Products” means the equipment, parts, materials, supplies, and other goods that Seller has agreed to supply under the Contract. References in these Terms and Conditions to the purchase and sale of Products may mean, where applicable, the licensing of Software loaded on or provided with the Products.

“Quotation” means Seller’s statement identifying the Products and Services, together with any quantity, price, delivery schedule, and/or other terms and conditions (in addition to or different from these Terms and Conditions), offered by Seller for sale to Buyer. A Quotation that incorporates these Terms and Conditions by reference shall be deemed to include these Terms and Conditions, whether or not Seller provides a complete copy of these Terms and Conditions to Buyer with the Quotation, with a purchase order acknowledgement, or with an invoice. Where there is a conflict between these Terms and Conditions and other provisions of the Quotation, the latter shall control.

“Services” means the services that Seller has agreed to provide under the Contract.

“Seller” means the Werbel entity -- whether WERBEL MICROWAVE LLC (“WML”) or an WML subsidiary – supplying Products and/or providing Services under the Contract.

“Terms and Conditions” means these “Terms and Conditions of Sale.”

2. SCOPE; CHANGES

The terms and conditions stated herein (these “Terms and Conditions of Sale”) govern all sales of Products or Services by WERBEL MICROWAVE LLC (collectively, “we,” “us,” “our,” “seller,” or Seller) to you or the entity you present (“you,” “buyer,” or Buyer). You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor) and that if you are entering into this Agreement for an entity, such as the company you work for, you present to us that you have the legal authority to bind that entity. Unless otherwise agreed to in writing by seller’s authorized agent, any terms and conditions contained in the buyer’s purchase order or any other document that are different from or in addition to these terms and conditions are objected to, are rejected, and will not be binding on us. By placing an order for products from us, or by accepting delivery of the products, you agree to be bound by and accept these terms and conditions of sale.

We may change the terms and conditions of this Agreement in our sole discretion by posting an updated version of these terms and conditions at this location; provided, however that the terms and condition of this Agreement in effect as of the date of an applicable order shall condition to govern such order and the products purchased thereunder.

3. CONTRACT FORMATION

No agreement or understanding, oral or written, purporting to modify these Terms and Conditions shall be binding on Seller unless it is made in writing, specifically stating that it is a modification of these Terms and Conditions and it is signed by Seller's authorized representative. No course of dealing, usage of trade, or course of performance shall be relevant to explain or supplement any of these Terms and Conditions. If these Terms and Conditions are deemed an offer, Buyer's acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not modify or amend these Terms and Conditions. Buyer's purchase order for the purchase of Products and/or for the performance of Services shall constitute Buyer's assent to these Terms and Conditions. Any terms and conditions contained in Buyer's purchase order or other form of communication from Buyer that are additional to or different from these Terms and Conditions, shall be deemed rejected by Seller, unless expressly accepted in writing by Seller's authorized representative. Alternatively, if these Terms and Conditions are deemed to be a response to, an acceptance of, or a written confirmation of, Buyer's offer, whether provided in the form of a purchase order or otherwise, Seller's acceptance is expressly conditioned upon Buyer's assent to these Terms and Conditions. Buyer's acceptance of Products tendered to Buyer by Seller shall constitute Buyer's express assent to all of the terms and conditions contained in these Terms and Conditions. All proposals, negotiations and representations, if any, made prior to or with reference hereto are hereby superseded by these Terms and Conditions. References in this Section to "these Terms and Conditions" shall be deemed to mean these Terms and Conditions and Seller's Quotation, if Seller has issued a Quotation.

4. QUOTATIONS

Seller shall offer Quotations for acceptance within thirty (30) calendar days from the date printed on the face of the Quotation, unless a longer time period is specified in the Quotation. The Quotation is withdrawn if not formally accepted by: (1) a signed Order referencing the Seller's Quotation number and these terms and conditions; (2) a return to Seller of a copy of the Quotation signed by Buyer, or (3) payment in full, within the designated period. No other form of acceptance is valid or will be recognized or accepted. Seller's acceptance of any Order is contingent upon Seller's continuing approval of Buyer's credit. Seller is under no obligation to enter an Order acknowledgement and may rescind the Quotation at any time prior to Buyer's unqualified acceptance.

5. ACCEPTANCE OF PURCHASE ORDERS

No Buyer purchase order shall be binding on Seller until accepted in writing by Seller, and Seller shall have no liability to Buyer with respect to purchase orders that are not accepted. Shipment against a purchase order shall be deemed to constitute Seller's acceptance thereof, subject to these Terms and Conditions. All purchase orders shall be subject to these Terms and Conditions, whether or not the purchase orders so state. Purchase orders accepted by Seller may not be cancelled or modified by Buyer without the prior written consent of Seller.

6. PRICES; PRICE CHANGES

a.) **Products.** The price of the Products sold pursuant to the Contract shall be as set forth in the Quotation. If price is not specified in the Quotation, price shall be based upon Seller's prices in effect at the time of shipment. Published prices are for Products of Seller's current standard

design and constructed of standard materials. Variation from the standard design and/or materials requires special pricing. Seller reserves the right at any time, and without incurring any obligation, to discontinue the manufacture of any model, to withdraw products from sale, to make changes in design, and/or to add improvements to products. Price also shall be based on freight rates in effect at the time of shipment. Where applicable, in the event of an increase in the applicable freight rates before the shipment of Products, such changes will be for the account of Buyer. Price advances, discounts, extras and other terms and conditions are subject to change without notice. Unless otherwise provided in the Quotation, price is based on delivery in accordance with the "Delivery" section below. Prices include Seller's standard packing. All pricing details are budgetary in nature, and may not be utilized as a basis for pricing similar, repeat, or subsequent orders. Freight related charges are not included in the pricing, unless otherwise specified in the Quotation. All prices quoted are exclusive of taxes, unless otherwise specified in the Quotation. Buyer agrees that all taxes, interest and penalties thereon, if any, relating to the services performed or the goods produced or sold hereunder, excluding taxes based upon the Seller's income and ad valorem property taxes of Seller, are to be paid when due by the Buyer.

- b.) Services.** Services prices are based on normal business hours (8 AM to 5 PM Monday through Friday). Overtime and Saturday hours will be billed at one and one half (1.5) times the normal business hour hourly rate. Sunday hours will be billed at two (2) times the normal business hours hourly rate; holiday hours will be billed at three (3) times the normal business hours hourly rate.

7. TAXES, DUTIES AND FEES

Seller shall be responsible for taxes measured on Seller's net income based upon performance of, or payment for, work under the Contract ("Seller Taxes"). Buyer shall be responsible for all other taxes, duties, fees or other charges of any kind (including, but not limited to any manufacturer's tax, retailers' occupation tax, use tax, sales tax, excise tax, duty, custom, inspection or testing fee, value added tax, or any other tax, fee or charge of any nature whatsoever) imposed by any governmental authority against Buyer, Seller or Seller's suppliers and/or contractors, based upon the Contract between Seller and Buyer. In the event Seller is required to pay any such tax, fee or charge, regardless whether such tax, fee or charge is imposed before or after Seller's delivery of the Products and/or Buyer's payment under the Contract, Buyer shall reimburse Seller therefor. In lieu of such reimbursement, Buyer shall provide Seller, at the time the order is submitted, with an exemption certificate or other document acceptable to the authority imposing such tax, fee or charge. If Seller's prices include any taxes, duties or fees (other than Seller Taxes), any change in such taxes, duties and/or fees shall be the basis for a price adjustment.

8. TERMS OF PAYMENT

- a.) **Terms.** Terms of payment are cash in full, without set-off or discount, in U.S. dollars, and by wire transfer, no later than thirty (30) days from date of invoice.
- b.) **Payment Default.** If Buyer defaults in any payment when due, or in the event that any voluntary or involuntary bankruptcy or insolvency proceedings involving Buyer are initiated by or against Buyer, then the whole Contract price shall immediately become due and payable upon demand, or Seller, at its option and without prejudice to its other lawful remedies, may defer delivery or cancel the Contract. Where delivery is deferred and Seller does not demand immediate payment of the full Contract price, pro-rata payments shall become due as shipments are made.

- c.) **Buyer Financial Condition.** If, during the period of performance of the Contract, the financial condition of Buyer is determined by Seller not to justify the terms of payment specified, Seller may demand full or partial payment in advance before proceeding with the work, or satisfactory security or guarantees that invoices will be promptly paid when due, or, at its option, without prejudice to other lawful remedies, may defer delivery or cancel the Contract.
- d.) **Delay.** If delivery is delayed by Buyer, which delay must be consented to by Seller, Seller may store the Products in accordance with subsection 8(e) "Storage" below and Seller may submit a new estimate of cost for completion based on prevailing conditions. Payments shall become due from the date on which Seller is prepared to deliver the Products and storage shall be the Buyer's risk and expense as provided in subsection 8(g) "Storage" below. If manufacture is delayed by Buyer for any cause, a partial payment based upon the proportion of the order completed shall become due from the date on which Seller is notified of the delay.
- e.) **Late Payment Charge.** Buyer shall pay a late payment charge on all amounts not paid in full when due at the rate of one- and one-half percent (1.5%) per month or at the maximum legally permissible rate, whichever is lower.

9. DELIVERY; TITLE TRANSFER; RISK OF LOSS/DAMAGE

- a.) **Delivery – U.S. Buyer.** For sales in the U.S. that do not involve export from the U.S., Seller shall deliver Products to Buyer EXW Seller's U.S. point of shipment (Incoterms® 2010). The point of shipment shall be the shipping dock of Seller's factory, warehouse or other facility that Seller designates as its discretion as point of shipment from time to time.
- b.) **Sales Involving Exports from U.S.**
- 1.) **Delivery -- U.S. Buyer; Subsequent Drop Shipment to Location Outside U.S.** For sales, in the U.S. to a U.S. Buyer, which involve drop shipment at Buyer's request and/or on Buyer's behalf, to a location outside the U.S., Seller shall deliver the Products to Buyer EXW Seller's U.S. point of shipment (Incoterms® 2010). The point of shipment shall be the shipping dock of Seller's factory, warehouse or other facility that Seller designates at its discretion as its point of shipment from time to time. Buyer is responsible for all transportation charges incurred after delivery of the Products to the carrier or Buyer at the point of shipment and shall reimburse Seller for any transit insurance or freight pre-paid for the Products by Seller. Buyer shall bear the risk of loss and/or damage in transportation. Buyer is responsible for filing any export documents required for export from the U.S.
- 2.) **Delivery – Non-U.S. Buyer; Routed Export Transactions.** For sales in the U.S. to a non-U.S. Buyer, Seller shall deliver Products to Buyer's freight forwarder EXW Seller's U.S. point of shipment (Incoterms® 2010). The point of shipment shall be the shipping dock of Seller's factory, warehouse or other facility that Seller designates at its discretion as its point of shipment from time to time. In a "Routed Export Transaction," as defined in the U.S. Census regulations, 15 CFR Section 30.3, where Buyer is a non-U.S. entity, Buyer shall authorize Buyer's designated freight forwarder or Seller to facilitate the export of the Products from the U.S. and to prepare and file export documentation with respect to such export transaction (hereafter, to "Facilitate the Export"). If Buyer authorizes its designated freight forwarder to Facilitate the Export, Buyer's freight forwarder shall

provide Seller with a copy of the final export documentation and proof of filing. If Buyer authorizes Seller to Facilitate the Export, Buyer shall cause Buyer's freight forwarder to provide Seller the information needed by Seller to Facilitate the Export. Buyer shall give timely notice to Seller identifying whom it has designated to Facilitate the Export.

- c.) Delivery Dates.** Delivery dates are approximate, are not guaranteed and are based upon prompt receipt by Seller from Buyer of all necessary shipping and other information. Seller may deliver in advance of the delivery schedule. Seller reserves the right to make delivery in installments, with all installments to be separately invoiced and paid for by Buyer when due per invoice, without regard to subsequent deliveries. Delivery of the Products to a commercial carrier at the shipping point shall constitute delivery to Buyer.
- d.) Title Transfer.** Title to Products shall pass to Buyer upon the earlier of delivery of the Products to the carrier or Buyer at the point of shipment in accordance with subsection (a) above, except that, for Routed Export Transactions, title shall transfer to Buyer upon delivery to Buyer's designated freight forwarder. Subject to applicable law, Seller, upon notice to Buyer, may retain title to the Products until such time as Seller receives payment in full from Buyer. Title to Software shall not pass to Buyer and is subject to the applicable license.
- e.) Risk of Loss/Damage.** Risk of loss and/or damage shall pass to Buyer upon delivery in accordance with subsection (a) above, except that, for Routed Export Transactions, risk of loss and/or damage shall pass upon delivery of the Products to Buyer's designated freight forwarder.
- f.) Delivery by Seller's Carrier.** Where the parties agree that delivery shall be made at a location other than Seller's point of shipment, where Seller will deliver using its carrier or Seller's privately owned or leased trucks, unloading at the agreed location shall constitute delivery to Buyer. Freight and handling charges by Seller may not reflect actual freight charges prepaid to the carrier by Seller due to incentive discounts earned by Seller based upon Seller's aggregate volume of freight tendered to a carrier or when a carrier must be used which charges a rate which is different than the rate upon which Seller's freight and handling charges were based. When shipments are delivered in Seller's privately owned or leased trucks, Buyer will be charged an amount approximating the prevailing common carrier rate.
- g.) Storage.** In the event that Buyer is unable to accept delivery of the Products at time of shipment, Seller shall invoice Buyer for the full purchase price as if shipment had been made and: (i) if Seller is able to store such Products in its own facilities, Buyer will pay Seller the reasonable handling and storage charges for the period of such storage, or (ii) if Seller is unable to store such goods at its own facility, Seller reserves the right to arrange handling and storage in a suitable bonded warehouse for Buyer at Buyer's expense. In cases where handling and storage become necessary, it shall be Buyer's responsibility to notify Seller when shipment is to be made. Seller will make necessary arrangements for shipment at Buyer's expense.

10. EXCUSABLE DELAYS; FORCE MAJEURE

- a.) Excuse of Performance.** Seller shall not be liable for any ordinary, incidental, or consequential loss or damage as a result of Seller's delay in or failure of delivery, or installation of Products or

performance of Services due to (i) any cause beyond Seller's reasonable control, (ii) an act of God, act of Buyer, embargo or other government act, authority, regulation or request, fire, theft, accident, strike, slowdown or other labor disturbance, war, armed conflict, act or threat of terrorism, riot, epidemic, delay in transportation, or (iii) inability to obtain necessary labor, materials, components, or facilities. Should any of the aforementioned events occur, Seller, at its option, may cancel Buyer's order with respect to any undelivered Products or incomplete Services or extend the delivery date for a period equal to the time lost because of delay. Notice of such election shall be given promptly to Buyer. In the event Seller elects to so cancel the Contract, Seller shall be released of and from all liability for failure to deliver the Products or to perform the Services, including, but not limited to, any and all claims on behalf of Buyer for lost profits, or any other claim of any nature which Buyer might have. If shipping or progress of the work is delayed or interrupted by Buyer, directly or indirectly, Buyer shall pay Seller for all additional charges resulting therefrom.

- b.) Allocation.** If Seller determines that its ability to meet the demand for products, including the Products, or to obtain labor, materials, components or facilities is hindered, limited or made impracticable due to causes set forth in subsection (a) above, Seller may allocate its available supply of products, including the Products, among itself and its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

11. LIMITED WARRANTY

a.) Scope and Period.

- 1.) **Products.** Seller warrants that the Products shall be delivered free from defects in material, workmanship and title and shall conform to Seller's specification agreed upon in a written and signed agreement by Buyer and Seller, if applicable, for the Products. This warranty shall expire twelve (12) months from first use of the Product or twelve (12) months from date of manufacture of the Product, whichever occurs first.
- 2.) **Repaired and/or Replaced Products and/or Parts of Products.** Seller warrants that the repaired or replaced Products or parts of Products shall be delivered free from defects in material, workmanship and title. In the case of repaired or replaced Products or parts of Products comprising warranty remedies for Products, this warranty shall expire upon expiration of the warranty period applicable to the Products originally supplied by Seller. In the case of other repaired or replaced Products or parts of Products, this warranty shall expire twelve (12) months from the date of repair or manufacture of the Products or parts of the Products.
- 3.) **Services.** Seller warrants that the Services shall be performed in a competent and diligent manner in accordance with any mutually agreed specification. This warranty shall expire ninety (90) days from the date of completion of such Services.
- 4.) **Applicability.** This warranty shall apply to any Products and/or Services bought, acquired, and/or used by an entity that, or person who, acquires the Products and/or Services from Buyer (a "Transferee"), except that any claim made against Seller pursuant to this warranty shall be made by Buyer only. Seller shall not be bound by this Section 11 to satisfy a claim under this Section made against Seller by a Transferee, whether such Transferee is a direct

or indirect Transferee of Buyer, Buyer shall provide any Transferee of a Product or Service written conspicuous notice of Sections 11 and 12 hereof.

- 5.) **Exceptions.** Supplement B to these Terms and Conditions lists Seller Products, parts, and Services for which Seller's warranties vary from the warranties set forth in this subsection 11(a).

b.) **Remedies**

- 1.) **Products.** If, prior to expiration of the warranty period set forth in subsection 11(a)(1), above, any Products shall be proved to Seller's satisfaction to be defective or nonconforming with the warranty set forth therein, Seller will repair or replace such defective Products or components thereof, FCA Seller's factory, warehouse or other facility that Seller designates at its discretion as point of shipment from time to time (Incoterms® 2010), or will refund or provide Buyer with a credit in the amount of the purchase price paid therefor by Buyer, at Seller's sole option. Buyer's exclusive remedy and Seller's sole obligation under this warranty shall be limited to such repair or replacement, FCA factory, warehouse or other facility that Seller designates at its discretion as point of shipment from time to time (Incoterms® 2010), or refund or credit by Seller, and shall be conditioned upon Seller's receiving written notice of any defect and/or nonconformance within a reasonable period of time, but in no event more than thirty (30) days, after it was discovered or by reasonable care should have been discovered. All claims not made in writing and received by Seller within such thirty (30) day period shall be deemed waived. In no event shall Seller's liability for such defective or nonconforming Products exceed the purchase price paid by Buyer for such Products. With prior approval from Seller, Buyer shall return the alleged defective Product or part, freight prepaid, for Seller's inspection, and no other Products shall be returned to any Seller office, factory, warehouse, authorized service center or other facility, without Seller's written consent.
- 2.) **Repaired and/or Replacement Products and/or Parts of Products.** If prior to the expiration of the applicable warranty period set forth in subsection 11(a)(2) above, any replacement Products and/or parts of Products shall be proved to Seller's satisfaction to be defective or nonconforming with the warranty set forth therein, the remedy set forth in subsection 11(b)(1) above shall apply to such replacement Products and/or parts of Products.
- 3.) **Services.** If, prior to expiration of the warranty period set forth in subsection 11(a)(3), above, any Services shall be proved to Seller's satisfaction to be nonconforming with the warranty set forth therein, Seller will re-perform such nonconforming Services. If the Services cannot be re-performed, Seller, at its option, shall refund or credit monies paid by Buyer for such nonconforming Services.

c.) **Exclusions** - The warranties set forth in this Section 11 do not cover:

- 1.) shipping expenses to and from Seller's office, factory, warehouse, authorized service center or other destination designated by Seller for repair or replacement of defective Products or any tax, duty, custom, inspection or testing fee, or any other charge of any nature related thereto;

- 2.) costs of removing defective Products from, and/or disassembling, equipment in which Products are assembled or reinstalling Products and/or reassembling such equipment, or testing repaired or replaced Products and/or the equipment;
 - 3.) field service travel and living costs and expenses;
 - 4.) Products subjected to abuse, neglect, negligence, misuse, misapplication, accident, damages by circumstances beyond Seller's control, improper installation (if by anyone other than Seller), improper operation (including, but not limited to, operation in excess of rated capacity or otherwise not in accordance with installation, maintenance, or operating instructions or requirements) improper maintenance, improper storage, and/or any other than normal use or service;
 - 5.) Products maintained, serviced, repaired or altered by anyone other than Seller or Seller's authorized service agencies;
 - 6.) Products and/or parts not manufactured by Seller; for Products furnished by Seller, but manufactured by others, Seller will assign to Buyer the written warranty, if any, of the manufacturer, if assignment is reasonably practicable; however, Seller does not adopt or guarantee or represent that the manufacturer will comply with any of the terms of the warranty of such manufacturer; but, in no event shall Seller's obligations be greater than those provided under Seller's warranty set forth in this Section 11.
- d.) **DISCLAIMER: THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS, OR OTHERWISE AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE. NO EMPLOYEE, REPRESENTATIVE, OR AGENT OF SELLER OTHER THAN AN OFFICER OF SELLER IS AUTHORIZED TO ALTER OR MODIFY ANY PROVISION OF THIS SECTION 11 OR TO MAKE ANY GUARANTEE, WARRANTY, OR REPRESENTATION, EXPRESS OR IMPLIED, ORALLY OR IN WRITING, WHICH IS CONTRARY TO THE FOREGOING.** Except where Buyer and Seller agree in a written and signed agreement upon the specifications applicable to the Products, Software, and/or Services, any description of the Products, Software, and/or Services, whether in writing or made orally by Seller or Seller's agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Buyer's order are for the sole purpose of identifying the Products and shall not be construed as an express or implied warranty. Any suggestions by Seller or Seller's agents regarding use, application or suitability of the Products shall not be construed as an express or implied warranty unless confirmed to be such in writing by Seller's authorized officer.

12. LIMITATIONS OF REMEDY AND LIABILITY

- a.) **Breach of Warranty Claims.** Buyer's only remedy for breach of any warranty under the Contract, other than the warranty provided under Section 14 "Intellectual Property Indemnity," WERBEL MICROWAVE LLC Terms and Conditions shall be the applicable remedy set forth in Section 11 "Limited Warranty" above. Seller's total liability for any and all breach of warranty claims under the Contract shall not exceed the purchase price allocable to the Product, Software or Service or

part thereof which gives rise to the claim.

- b.) **Other Claims.** Seller's liability for any claim other than a breach of warranty claim under Section 11 "Limited Warranty," whether in contract, negligence, tort, strict liability, indemnity or otherwise for any loss or damage arising out of, connected with, or resulting from the Contract or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any Products covered by or furnished under the Contract or from Services rendered under the Contract, shall in no case (except as provided in Section 14 "Intellectual Property Indemnity") exceed five percent (5%) of the purchase price allocable to the Products or part thereof or Services giving rise to the claim.
- c.) **Consequential Damage Disclaimer. SELLER SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL, CONTINGENT, SPECIAL OR PUNITIVE DAMAGES WHATSOEVER.** Seller shall not be liable for lost profits or revenues, loss of use of the Products, Software or any related equipment or systems, cost of capital, cost of substitute products, cost of facilities or services, business interruption, downtime, shutdown, or slowdown costs, any other types of economic loss, penalties, special or punitive damages, and claims of Buyer's customers for any such damages.
- d.) **Expiration of Claims.** All claims against Seller arising out of or related to the Contract or the performance or breach thereof shall expire unless made and presented to Seller in writing by Buyer before expiration of the applicable warranty period.
- e.) **Precedence.** The limitations of this Section shall apply regardless of whether a claim is based in contract, tort (including negligence), warranty, strict liability, intellectual property, or otherwise, and shall take precedence over any conflicting terms and conditions, except where the limitations of liability of such conflicting terms limit Seller's liability further.

13. INDEMNITY

- a.) **Third party claims.** Each of Buyer and Seller (each an "Indemnified Party" and an "Indemnifying Party") shall indemnify the other party from and against claims brought by a third party, for bodily injury or damage to the third party's tangible property, to the extent such injury and/or damage is caused by the negligence of the Indemnifying Party, provided that the Indemnified Party gives the Indemnifying Party prompt notice of any such claim and all necessary information and assistance so that the Indemnifying Party, at its option, may defend or settle such claim and the Indemnified Party does not take any adverse position in connection with such claim. In the event that the injury or damage is caused by joint or concurrent negligence of Buyer and Seller, the loss or expense shall be borne by each party in proportion to its degree of negligence. For purposes of Seller's indemnity obligations hereunder, Products shall not be considered third party property and the facility in which a Product or Software is used and/or the Services are performed shall not be considered third party property.
- b.) **Indemnity by Buyer for Third Party Warranty Claims.** If Buyer supplies Products or Services to a third party, uses Products or Services at a facility owned by a third party, and/or transfers Products and/or Software to a third party, Buyer shall indemnify and defend Seller from and against any and all claims by, and liability to, any such third party in excess of the limitations set forth in Sections 11 "Limited Warranty" and 12 "Limitations of Remedy and Liabilities." For

purposes of this subsection (b), "Seller" means Seller, its affiliates, suppliers, contractors, licensors and their employees.

14. INTELLECTUAL PROPERTY INDEMNITY

Seller warrants that, to the best of its knowledge, Products, Services and/or Software furnished hereunder, and any part thereof, (each a "Delivered Item") shall be delivered free of any rightful claim of any third party not affiliated with Buyer for infringement of any U.S. patent, any trademark registered in the U.S. Patent and Trademark Office and/or any copyright registered in the U.S. Copyright Office. Seller will, at its own expense, defend or settle any suits that may be instituted against Buyer for alleged infringement by the Delivered Item of any U.S. patent, any trademark registered in the U.S. Patent and Trademark Office and/or any copyright registered in the U.S. Copyright Office provided that: (a) such alleged infringement consists of the use of the Delivered Item for (i) any of the purposes for which Buyer informed Seller such Delivered Items would be used, or (ii) if Buyer did not so inform Seller, any of the purposes for which Buyer reasonably believed such Delivered Items would be used; (b) Buyer shall have made all payments for such Delivered Items then due hereunder; (c) Buyer shall give Seller immediate notice in writing of any such suit and transmit to Seller immediately upon receipt of all processes and papers served upon Buyer; (d) Buyer does not take any position adverse to Seller in connection with such claim; and (e) Buyer shall permit Seller through Seller's counsel, either in the name of Buyer or in the name of Seller, to defend such suit(s) and give all needed information, assistance and authority to enable Seller to do so.

In case of a final award of damages in any such suit, Seller will pay such award but will not be responsible for any compromise or settlement made without its written consent. In case the Delivered Item itself is in such suit held to infringe any valid patent issued in the United States and/or a trademark and/or copyright registered in the United States, and its use is enjoined, or in the event of a settlement or compromise approved by Seller which shall preclude future use of the Delivered Item, Seller shall, at its own expense and at its sole option, either: (a) procure rights to continue using such Delivered Item; (b) modify the Delivered Item to render it non-infringing; (c) replace the Delivered Item with a non-infringing Product and/or Software; or (d) refund the purchase price paid by Buyer for the Delivered Item after return of the Delivered Item to Seller (less reasonable depreciation for any period of use). Notwithstanding the foregoing, Seller shall not be held responsible for claims of infringement of any patents covering the use of the Delivered Item in combination with other goods or materials not furnished by Seller.

The foregoing states the entire liability of Seller for intellectual property infringement, and **IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES ATTRIBUTABLE TO AN INTELLECTUAL PROPERTY INFRINGEMENT**. Buyer, at its own expense, shall defend Seller against, and/or settle, (a) any patent, trademark, copyright or other intellectual property infringement claim pertaining to a Delivered Item furnished by Seller to Buyer manufactured in accordance with designs, drawings or other descriptions proposed or furnished by Buyer; and (b) any claim against Seller of contributory infringement resulting from the use or resale by Buyer of a Delivered Item sold hereunder. Buyer shall indemnify Seller for any award against Seller or settlement by Seller regarding any such claims and attorneys' fees and defense costs incurred in defense of such claims.

15. SECURITY AGREEMENT AND FINANCING STATEMENTS

As security for payment of the purchase price under the Contract, Buyer hereby irrevocably grants Seller a security interest in the Products purchased by Buyer, together with all accessories,

attachments and replacement parts and all substitutions, replacements and proceeds thereof to secure payment of the purchase price and of all monies which may be due under the Contract. Buyer hereby authorizes Seller to file all financing statements, any amendments and continuations thereof, or any other documents necessary or reasonably required, for the perfection and protection of a security interest under applicable law, and to deliver notice to prior holders of security interests, of Seller's security interest in the Products to protect its interest.

16. INSURANCE

Until payment in full of the purchase price, Buyer shall maintain insurance covering all Products sold by Seller to Buyer in such amounts and against such risks as is customary by companies engaged in the same or similar business and similarly located, and shall, upon Seller's request, furnish evidence of such insurance satisfactory to Seller.

17. DRAWINGS; OTHER DESIGN DATA

All specifications, drawings, designs, data, information, ideas, methods, product samples, tools, gages, dies, fixtures, patterns and/or inventions made, conceived, developed or acquired by Seller in connection with procuring and/or executing the Contract will vest in and inure to Seller's sole benefit notwithstanding any charges therefor which may have been or may be imposed by Seller on Buyer. Buyer shall not give, loan, exhibit, sell or transfer to any person who is not a Buyer employee and authorized to receive such information, or to any organization or entity, any drawing, photograph, specification or product sample furnished by Seller or reproduction thereof which may enable such person, organization or entity to furnish similar products or parts therefor.

18. RETURN OF PRODUCTS

No Product or part shall be returned to Seller without written authorization and shipping instructions first having been obtained from Seller.

19. ASSIGNMENT AND SUBCONTRACTING

None of Buyer's rights under the Contract shall be assigned by Buyer to any other person, whether by operation of law or otherwise, without Seller's prior written approval. Seller may, without the necessity of obtaining Buyer's prior written consent, assign the Contract or subcontract the production of all or any portion of the Products and/or performance of the Services.

20. CANCELLATION

No purchase order submitted to Seller may be cancelled by Buyer without the prior written consent of Seller, which consent will at all times be conditioned on Buyer's agreement to pay Seller's cancellation charge. For a finished Product that, in Seller's judgment, is readily resalable to others, the cancellation charge shall be 15% of the invoice price of the Product. For all other cancellations, the cancellation charge shall amount to all cost and expenses incurred by Seller and arising out of or in connection with Buyer's purchase order plus reasonable profit. In no event shall the cancellation charge be less than 10% of the invoice price of the Product or more than the invoice price.



Creators of Custom Microwave-Electronic Devices

WERBEL MICROWAVE LLC

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21. HIGH RISK APPLICATION USE DISCLAIMER

PRODUCTS AND SERVICES SOLD BY SELLER ARE NOT INTENDED FOR USE IN CONNECTION WITH ANY NUCLEAR FACILITY OR ACTIVITY, CRITICAL SAFETY SYSTEM, MEDICAL DEVICE, MILITARY DEVICE, SATELLITE, AVIATION EQUIPMENT, AIR TRAFFIC CONTROL EQUIPMENT, OR OTHER HIGH RISK APPLICATIONS (COLLECTIVELY, "HIGH RISK APPLICATIONS"). SELLER SHALL NOT USE OR PERMIT OTHERS TO USE PRODUCTS OR SERVICES FOR SUCH HIGH RISK APPLICATIONS WITHOUT SELLER'S PRIOR WRITTEN CONSENT. IF SO USED WITHOUT SELLER'S PRIOR WRITTEN CONSENT, SELLER DISCLAIMS ALL LIABILITY FOR ANY DAMAGE, INJURY OR CONTAMINATION, AND BUYER SHALL INDEMNIFY AND HOLD SELLER, ITS OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS, ASSIGNS AND CUSTOMERS HARMLESS FROM AND AGAINST ANY AND ALL SUCH LIABILITY. SELLER'S CONSENT, IF ANY, WILL BE CONDITIONED UPON ADDITIONAL TERMS AND CONDITIONS ACCEPTABLE TO SELLER.

22. GOVERNING LAW; VENUE

These Terms and Conditions and the Contract shall be governed by and construed in accordance with the laws of the State of New Jersey. Seller and Buyer irrevocably submit to the exclusive jurisdiction of the state courts located in Essex County, State of New Jersey and the federal courts located in the State of New Jersey, and Seller and Buyer waive any objection to venue or *forum non conveniens*, for the resolution of any dispute relating to these Terms and Conditions or the Contract. The rights and obligations of Seller and Buyer shall not be governed by the provisions of the United Nations Convention on Contracts for the Internal Sale of Goods.

23. EXPORT/IMPORT:

Buyer shall comply, in the receipt and use of the Products and the Software, with all applicable import and export control laws, regulations, orders and requirements of the jurisdictions in which the Seller and Buyer are established or from which Products and Software are provided. Buyer shall not transfer, release, import, or export Products and/or Software in violation of such applicable laws, regulations or other legal requirements. Buyer shall provide a completed end-user certification in a form satisfactory to Seller upon Seller's request.

24. ATTORNEYS' FEES:

Buyer agrees to pay all of Seller's costs and expenses of collection and related litigation, including but not limited to attorneys' fees and costs.

25. SALVATORY CLAUSE:

The invalidity, in whole or in part, of any of the provisions of these Terms and Conditions, shall not affect the enforceability of any of the other provisions thereof.

26. APPLICABILITY:

These Terms and Conditions as stated herein are applicable as of the date of this printing and until such time as changed by Seller.