

Phase2 Microwave LTD – General Terms and Conditions of Sale – (P2MW v1)

1. (a) Unless other terms and conditions are expressly accepted by Phase2 Microwave Ltd. ("the Company") by means of a written amendment to these General Terms and Conditions of Sale, signed by a Director, and referring specifically to the terms and conditions to be amended, the Contract shall be on the terms and conditions set out below ("the Contract Terms") to the exclusion of any other terms and conditions whether or not the same are endorsed upon, delivered with, or referred to in any purchase order or other document delivered by the Purchaser to the Company.
(b) The Purchaser acknowledges and agrees that the Contract Terms herein set out are a complete record of the terms and conditions of any contract (save only for the description of the goods and the price which are set out on the face of this form) and further agrees not to rely on any statement, representation or undertaking by the Company other than as contained herein or agreed pursuant to paragraph 1 (a) above.
2. (a) The Contract is made when and not before the Company issues written acknowledgement of the Purchaser's order.
(b) The Company will endeavour to complete the contract or deliver the goods within the time agreed, such time to date from acknowledgement of receipt by the Company of a written order to proceed and of all necessary information and drawings to enable the work to be put in hand, or if no time is agreed, within a reasonable time, but in no circumstances will it be liable for loss or damage of any kind whatsoever caused directly or indirectly by any delay in the completion of the contract or delivery of the goods. If by reason of any act, event, state of affairs or condition beyond the Company's control, including, but without prejudice to the generality of the foregoing, any inability to obtain any necessary import or export licences or any other licences or consents of any governmental or other authority, the completion of the contract or the delivery of the goods is, in the Company's opinion, rendered impracticable, the Company may terminate the contract by giving notice in writing of the Company's intention to terminate the contract. Thereupon the Purchaser will pay to the Company such a sum as will, together with any sums paid previously, bear the same proportion to the contract price (including any variation or adjustment thereof) as the goods delivered or services provided at the time of such termination bear to the goods and services contracted for.
3. (a) Unless otherwise agreed inland orders will be despatched carriage to be paid by the Purchaser. Orders for delivery within the United Kingdom will be insured against loss or damage to the goods while in transit to their destination. Orders for delivery outside the United Kingdom will be similarly insured while in transit to a U.K. port.
(b) The Company endeavours to ensure that goods despatched for carriage to the Purchaser are properly packed and transported in a manner suitable for these goods and (subject only to the risks covered by the insurances referred to in paragraph 3(a) above) accepts no responsibility or liability whatsoever for any delay during transit.
(c) Unless specifically agreed in writing there shall be no refund of packing charges except in the case of non-expendable pallets or containers which are charged for and for which credit will be given on return.
(d) No claim for damages or shortages will be considered unless the Company and the carrier are advised in writing within three days of delivery and no claim for non-delivery will be considered unless the Company is notified in writing within ten days of reasonable delivery time taking into account date of despatch.
(e) A standard charge will be made for carriage and insurance.
4. Unless otherwise stated the price is based upon costs ruling at date of quotation and is subject to fair adjustment by the Company to take account of any alteration in such costs prior to delivery of the goods or (in the case of delivery by instalments) to the final delivery provided always that without prejudice to the generality of the foregoing the Company shall have the right in its absolute discretion in the event of any alterations in the currency exchange rates before the date of payment (irrespective of whether an invoice has been delivered or not) to adjust the price to reflect any alterations in the rate of exchange and such adjusted price shall be binding upon the parties and be substituted for the price quoted in the acknowledgement of order or the invoice if delivered.
5. (a) All prices are nett and no settlement discount is allowed unless separately agreed in writing. Agreed credit accounts are payable not later than 30 days from the date of invoice unless otherwise agreed in writing. All payments are to be made on or before the due date as a condition precedent to future deliveries. If payment is not made on the due date the Purchaser shall in addition pay interest on the outstanding amount of 2 percent per month.
(b) The Company reserves the right to request pre-payment or letter of credit against an order prior to the delivery of goods.
(c) Where the agreement stipulates a price per unit subject to the Purchaser taking delivery of a minimum quantity of goods within an agreed period of time, and the Purchaser's instructions result in that minimum quantity not being delivered, the Company reserves the right to invoice the Purchaser for the difference between the price paid for the goods and the price quoted for the quantity next below the quantity delivered.
(d) The Company shall be entitled to recover from the Purchaser by way of addition to the contract price(s), such amount(s) which the Company may become liable to pay in respect of Value Added Tax and Customs Duty in relation to goods or services supplied to the Purchaser.
(e) The Company shall be entitled to assign sub-contract or sub-let this contract or any part thereof.
6. (a) The price shall become payable when the Company sends an invoice to the Purchaser.
(b) The Company shall not be liable for any loss or damage to the goods after these have been handed over to a carrier or to the Purchaser.
(c) No property or title in goods which are the subject of this agreement shall pass to the Purchaser until such goods have been paid for.
(d) The Purchaser will if requested by the Company store or hold such goods until they have been paid for in such a way as to indicate clearly to anyone inspecting or examining them that they are the property of the Company.
(e) If the Purchaser mixes such goods with other goods, or adds such goods to, or attaches them to, or makes them part of, other goods, the Company will become the owner of such other goods until the goods which are the subject of the agreement shall have been paid for.
(f) Notwithstanding that the Company may remain owner of goods that are the subject of this agreement or that it may become the owner of other goods pursuant to sub-clause (e) above, the Purchaser may deal with such goods or such other goods in the ordinary course of its business; but any proceeds recovered by the Purchaser in respect of such dealing (or any dealing, whether in the ordinary course of business or otherwise) shall belong to, and be held in trust for, the Company and any claims, rights, or other benefits acquired by the Purchaser shall be held in trust for the Company by the Purchaser and shall be assigned by the Company at its request.
7. (a) If any goods sold by the Company to the Purchaser should in any way be defective the Company will seek to ensure so far as it is reasonably and practically possible that the Purchaser will enjoy the benefit of any warranty or guarantee extended by the supplier or manufacturer to the Company or available to the Company by reason of any statute or rule of law; and the Company will assist the Purchaser in whatever way it is reasonably and practically possible in seeking to secure a proper and effective remedy against the supplier or manufacturer in respect of any defect to the goods and in respect of any other matter of which a complaint appearing to the Company to be reasonable is made, provided that the Company is notified by the Purchaser of any complaint concerning any defect or other matter reasonably promptly and in any event within four weeks of the date of delivery of the goods to which the complaint relates.
(b) Although the Company will assist the Purchaser in accordance with paragraph (a) above if the goods sold should be defective, the Company cannot itself assume any responsibility for the condition, quality, merchantability, compliance with description, fitness for the purpose or correspondence with the sample of goods obtained by the Company from a supplier or manufacturer, nor can the Company accept liability in respect of any defect in the design, materials, manufacture, assembly or workmanship of such goods, nor in respect of any loss, damage or injury which such defects may cause whether or not the same may be caused by the act or omission of the Company, its servants, agents or independent contractors, whether negligently or otherwise.
(c) Persons, including Purchasers, dealing in goods sold by the Company have no authority, right or power to bind the Company in any way, or to undertake or incur on the Company's behalf any obligations or liability expressed or implied.
(d) The Company shall not be liable for consequential loss or damage (whether or not consequential) arising from the use of the goods.
8. The Company hereby reserves the right unless otherwise agreed in writing to make without notice such minor modifications in specifications designs or materials as it may by experience deem necessary or desirable.
9. (a) The Company hereby gives notice that if goods supplied are exhibited or displayed at any exhibition, fair or show anywhere in the world, it may result in the withdrawal of a licence from the Company or in the breach of a contract by the Company or in the imposition of a penalty upon the Company. The Purchaser shall be liable for the loss suffered because of any such withdrawal, breach or imposition and is advised to consult the Company before exhibiting at any such fair or show.
(b) The Purchaser agrees with the Company that he will acquaint himself with the requirements of all relevant Government statutory or other authorities, bodies or corporations relating to the goods and undertakes that at all times whilst the goods are in his possession or under his control he will comply with such requirements and will indemnify the Company against any liability due to the breach of such requirement.
(c) The Purchaser undertakes that he will comply with the Company's maintenance instructions relating to the goods.
(d) No right of licence is granted by the Contract Terms to the Purchaser under any patent, copyright, registered design or other industrial property right except the right to use or resell the goods.
10. The Purchaser undertakes to bring the stipulations in Clauses 7 and 9 hereof to the notice of all persons to whom the goods or any of them are sold, offered for sale, let, hired or otherwise disposed of and undertakes to ensure that the contract or other arrangement between the Purchaser and such other persons requires such other persons to comply with the said stipulations and also contains a provision in like terms mutatis mutandis to those contained in this clause.
11. The Purchaser shall not without the prior written consent of the Company assign or in any way dispose of any of its rights or obligations hereunder to any other person, firm or company.
12. (a) Failure by the Company to enforce any of the Contract Terms shall not be construed as a waiver of any of the Company's rights hereunder.
(b) This contract shall be construed and operated in accordance with English law and the Purchaser hereby submits himself to the jurisdiction of the English courts.
(c) The Purchaser agrees that, in the case of goods not made by the Company, it will endeavour to obtain full satisfaction in relation to any complaint concerning the goods direct from the manufacturer or other party supplying the goods to the Company and further agrees not to commence any legal proceedings against the Company in respect of any such complaint unless and until proceedings against such manufacturer or supplier to such complaint have been prosecuted to judgement.