



MICRO LAMBDA WIRELESS, INC.

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Standard Terms & Conditions of Sale

- 1 ACCEPTANCE** Except as otherwise agreed to in writing by the purchasing party which places the order as hereinafter defined ("Buyer") and Micro Lambda Wireless ("Seller"), the following sets forth all of the terms of the purchase and sale of products ("Products"), as hereinafter defined, between Seller and Buyer and supersedes all prior agreements, offers, representations and negotiations between them to the extent that they conflict or in addition to the terms contained herein, this being intended as a final expression and complete and exclusive statement of the terms of the sale. Acceptance by Seller of Buyer's purchase order ("Order") is expressly made conditional on Buyer's assent to these terms and conditions. Acceptance by Buyer of the products described on Seller's acknowledgment or, if no acknowledgment is sent by Seller, delivery of Products to Buyer, shall constitute acceptance of the terms hereof. These terms and conditions may not be varied except by a written agreement with legal consideration subsequently signed by an Officer of Seller.
- 2 FOB** Unless otherwise stated, all prices and terms of sale are F.O.B. Origin (domestic orders), Ex Works Fremont, CA (international orders). Passage of title and risk of loss shall pass to the Buyer upon delivery of products to the Buyer's designated carrier at the F.O.B point.
- 3 DELIVERY** Rescheduling of shipments shall be by mutual agreement. Notwithstanding the foregoing, the Seller's extensive line of products requires close coordination of the Buyer's requirements with the Seller's production schedules to avoid possible delays in shipments. Accordingly, the Seller reserves the right to ship in advance of the Seller acknowledged schedule date unless the Buyer is established as a "Just in Time" (JIT) account. Unless otherwise stated on the Order, Seller may ship all the goods furnished hereunder at one time, or in separate parts or lots from time to time within the shipping period herein provided. Claims that the Seller did not ship the total quantity of goods shown on the Order will be researched and reconciled with all due diligence.
- 4 FORCE MAJEURE** Seller will make every reasonable effort to meet any estimated delivery date set forth on our quotation and confirmed in our acknowledgment to your order. However, Seller shall not be liable for any loss (consequential or otherwise) due to delay in performance or shipment hereunder due to unforeseen circumstances or causes beyond its control. Seller shall not be liable by reason of any delays in performance caused by Acts of God or of the public enemy, acts of any Government authority, war, strikes, fire, floods, accidents, government priorities or regulations, delays in transportation, shortages of materials and/or supplies or any other causes beyond its reasonable control. If shipment of any Product is delayed at Buyer's request, Seller may invoice Buyer on the date that Seller is prepared to make shipment to Buyer.
- 5 WARRANTY** Seller warrants for a period of twelve (12) months from the date of original shipment that the Products will be free from defects in material and workmanship and will be in conformity with applicable specifications and drawings. However, this warranty shall not apply to any product which has been subjected to misused, misapplication, accident, improper installation, neglect, unauthorized repair, alteration, adjustment, inundation or fire. See Micro Lambda Wireless, Inc. Warranty Policy and Customer Return Procedure 96-0200-005.
- 6 TEST DATA** Unless specifically noted herein, qualification tests and any test data above and beyond Micro Lambda Wireless standard tests and test data, are not included in the selling price. Qualification tests may be performed by the Seller and test data supplied at the specific request and expense of the Buyer.
- 7 PAYMENT** Payment terms are Net 30 days from the date of invoice. Such terms are subject to credit approval by Seller. Unless specifically otherwise agreed in writing by Buyer and Seller, all payments are to be made in United States Dollars (USD\$). If made by check, the check must be drawn on a U.S. Bank. All banking charges, if any, are to be prepaid by the buyer. New customers are required to provide credit references. Payment shall not be withheld on account of any claim by Buyer against Seller. Seller reserves the right, among other remedies, either to cancel the Order or suspend deliveries in the event Buyer fails to pay for any invoice or shipment when payment becomes due. Any tax, duty, custom or other fee of any nature imposed upon this transaction by any federal, state or local government authority shall be paid by the Buyer, in addition to the price quoted or invoiced. In the event Seller is required to prepay any such tax, duty, custom or other fee, Buyer will reimburse Seller.
- 8 CHANGE ORDERS** Buyer may, by written notice, make changes or additions in the general scope of this Order in any one or more of the following: specification, designs or drawings, samples or other description to which the articles are to conform, in methods of shipment and packaging, or place of delivery. If such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and the Order modified accordingly. Any claim for an equitable adjustment shall be made within thirty (30) days of the receipt of such notice. The equitable adjustment shall be made based on negotiations between Buyer and Seller. Nothing in this clause shall excuse the Seller from proceeding without delay to perform this Order as changed. Seller shall make no substitutions or changes to the form, fit or function of the articles furnished to Buyer by Seller hereunder without prior written notice and approval in writing from Buyer.
- 9 TERMINATION BY DEFAULT** In the event that either party defaults in any of the terms, conditions, obligations, undertakings, covenants, or liabilities set forth herein, the other party shall give the defaulting party written notice of such default. If the defaulting party does not remedy such default within thirty (30) days following receipt of written notice thereof, the party giving notice may cancel the Order by providing the defaulting party with a written notice of cancellation. In addition, either party may cancel the Order by providing written notice to the other party in the event the other party becomes insolvent, unable to meet its debts as they become due, files a petition for bankruptcy under any chapter of the U.S. bankruptcy laws, enters into any arrangement or composition with creditors, or is put into liquidation. Cancellation of the Order shall not relieve either party from its obligations hereunder which shall have accrued prior to such cancellation. Cancellation by Buyer of the Order pursuant to this article shall be Buyer's sole and exclusive remedy for any breach by Seller.
- 10 TERMINATION FOR CONVENIENCE** Orders accepted by Seller can only be canceled for Buyer's convenience by providing written notice at least thirty (30) days prior to the acknowledged ship date. In the event an Order is canceled for Buyer's convenience, Buyer will be liable for the sales price of all finished goods, plus the total cost of all work in process, all raw materials purchased for the Products, including long lead time and/or bulk material, a reasonable profit and any other commitment made by, or cost incurred by, the Seller for the specific purpose of complying with the Order. In no event will Buyer's liability under this section exceed the total value of the canceled portion of the Order.
- 11 TAXES AND IMPORT DUTIES** Buyer agrees to furnish Seller with an exempt purchase or resale certificate or, in the absence of same, Buyer assumes all liabilities for all Federal, state and local taxes and duties, other than taxes based upon Seller's net income. Seller will not report, collect, or pay any tax, which may be imposed on Buyer, and Buyer acknowledges that it accepts full responsibility to report and pay all such imposed taxes.

Except as expressly agreed to in writing by Seller, any and all customs, duties, taxes or other fees in any form which may be charged or assessed with respect to the importation into any foreign country of any Products, documentation or information furnished or sold shall be for the account of and paid for by the Buyer.
- 12 EXPORT** Buyer shall not export or re-export technical data or goods supplied by Seller directly or through others, to the prescribed countries, or foreign national of those countries and/or denied parties, listed in Section 746, 764 and associated or successor sections of the U.S. Export Administration Regulations unless properly authorized by the U.S. Government. Seller shall be responsible for obtaining required export licenses or other approvals from the government of the country of origin. Should any government deny a license or approval necessary for the performance of the Order for reasons beyond the control of Seller, this Order may be canceled in accordance with clause 10.
- 13 DATA AND INTELLECTUAL PROPERTY RIGHTS** If delivery of technical data and/or computer software is required, it shall be provided at the sole discretion of Seller with data rights negotiated between the parties. Any technical data or information which Seller discloses to Buyer is and shall remain proprietary to Seller and shall be protected by Buyer in the same manner as Buyer protects its own confidential information but with no less than a reasonable degree of care. Buyer agrees not to disclose any such data to any third party, including its affiliates, nor to use it for any purpose other than as intended by Seller. Nothing shall be deemed to transfer to either party any right or license of any kind in any of the other party's intellectual property.

Unless otherwise expressly set forth in writing by Seller, non-recurring engineering charges and all charges of a similar nature which may be billed to Buyer for work performed by Seller in connection with the sale of Products from Seller to Buyer (including but not limited to tooling charges, partial preparation charges, drawing or design charges, set-up or fit-up charges, and the like) represent only part of the cost thereof incurred by Seller. Buyer does not acquire any right, title or interest in, or license (either express or implied) to, any drawings, designs, inventions or intellectual property, or any tooling or other tangible property, by virtue of any such charges.
- 14 QUALITY PROVISIONS** Proposed products shall be manufactured in a facility, which complies with the requirements of MIL-I-45208A, Inspection System Requirements. Seller will upon the Buyer's request, provide a certificate of compliance to MIL-I-45208A. Seller cannot certify or warrant compliance to other quality requirements for off-the-shelf or catalogue products. If required by the Buyer, copies of Micro Lambda's Quality Manual and Quality Procedures can be provided.
- 15 MRB AUTHORITY** Seller retains the exclusive right to exercise material Review Board (MRB) decisions, (Rework / Return to Vendor / Scrap / Repair / Use-As-Is), for off-the-shelf or catalogue items.
- 16 CONFIGURATION CONTROL** Seller retains the exclusive right to maintain configuration control over all off-the-shelf and catalogue products.
- 17 INTEREST AND ATTORNEY FEES** Should Seller be required to utilize the services of an attorney or resort to any legal process to collect any amount due from the Buyer, then the Buyer shall be liable, in addition to interest at the maximum legal rate from the date such amount is due, for reasonable attorney's fees and/or court costs.
- 18 GOVERNING LAW** This contract will be governed by and construed in accordance with the laws of the State of California, USA. All disputes shall be subjected to the jurisdiction of the courts within the State of California.
- 19 LIMITATION OF LIABILITY / DISCLAIMER OF DAMAGES** MICRO LAMBDA WIRELESS INC. SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDED, WITHOUT LIMITATION, ANY LOSS OF INCOME, PROFITS, OR PRODUCTION, INCREASE IN COSTS OF OPERATIONS, OR DAMAGE TO MATERIAL, ARISING IN CONNECTION WITH THE SALE, INSTALLATION, USE OF OR INABILITY TO USE ITS PRODUCTS.
- 20 ENTIRE AGREEMENT** This Order is intended by the Seller and Buyer as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings, written or oral, between the parties, no usage of the trade nor acceptance or acquiescence in a course of performance rendered under this Order shall be relevant to supplement, explain or be relevant to determine the meaning of the terms of this Order. No amendment or change of any kind shall be binding upon Seller unless in writing and signed by an authorized representative of Seller.

