

INTER-CONTINENTAL MICROWAVE GENERAL TERMS & CONDITION OF SALE

THE FOLLOWING TERMS & CONDITIONS OF SALE APPLY TO ALL SERVICES AND PRODUCTS SOLD BY CEPA EQUIPMENT, LLC, dba INTER-CONTINENTAL MICROWAVE, HEREINAFTER REFERRED TO AS ICM. NOTWITHSTANDING ANY DIFFERENT OR ADDITIONAL TERMS THAT MAY BE EMBODIED IN YOUR ACCEPTANCE OF THIS OFFER, THIS OFFER IS EXPRESSLY CONDITIONED ON YOUR ASSENT TO THE TERMS & CONDITIONS SET FORTH BELOW AND ON THE REVERSE SIDE HEREOF. IF YOUR ACCEPTANCE INCLUDES ADDITIONAL OR DIFFERENT TERMS, IT SHALL BE DEEMED A COUNTEROFFER.

1) **PRICE.** Prices do not include sales excise, use, duty or other taxes or charges now in effect or hereafter levied by reason of this transaction. All such charges shall be paid by the Buyer. Unless specifically noted, pricing is valid for 30 days, except ICM reserves the right to adjust prices due to material cost increases. Any changes in specifications proposed by the Buyer must be in writing and delivered to ICM for analysis. ICM will determine the feasibility OF SAID PROPOSED CHANGES AND ADVISE THE Buyer in writing if adjustments in tooling, engineering services and/or unit pricing would be required, and await Buyers approval before proceeding.

2) **DELIVERY AND ACCEPTANCE.** All shipments made to Buyer are F.O.B. ICM's facility and legal title and risk of loss with respect to Products or Services so delivered shall pass to Buyer upon such delivery. If the goods referenced in this Agreement are being delivered outside the United States (or its possessions), the applicable delivery term for the goods is DAF (foreign border point of entry) (Incoterms 2000). Goods held by ICM at Buyer's request beyond the scheduled delivery date shall be at Buyer's risk and expense. Without limiting the foregoing, Buyer shall be solely responsible, for all freight, delivery and insurance charges. The Buyer recognizes that variances in the parts can occur due to design, material, or transit conditions over which ICM has no control. Buyer agrees to make or cause to be made such tests and inspections of products purchased pursuant to this Agreement in order to determine whether or not such products conform to agreed upon specifications. In the event such a claim is made, ICM shall have the right to inspect any alleged non-conforming products either at the Buyers premises or require the return of said defective product to ICM's facilities, with transportation charges prepaid, in order to confirm Buyer's claim and inspect the product to determine the cause of any such defect or material failure to meet a specification. Return of goods requested by Buyer or required by ICM must be agreed upon in advance by ICM and a 'returned authorization number' (RMA) issued and referenced in the shipping documents which accompany the returned shipment. ICM's receiving department will not accept any shipment without a previously authorized RMA number included. The issuance of a RMA number and return of product to ICM in no way is a concurrence that said product is defective and ICM has concurred with Buyers claims. Subject to confirmation by ICM that such product is non-conforming as provided in Buyer's notice to ICM, ICM shall, at its sole election, (i) issue to Buyer a credit in the amount of the purchase price of the non-conforming product (ii) Replace the non-conforming product so as to render it in conformity with the Specifications therefore or (iii) Replace the non-conforming product with product which shall conform to specifications. In the event Buyer fails to notify ICM within thirty (30) days of the date of delivery of any products of any failure of such product to conform to the specifications therefor, such product shall conclusively be deemed for all purposes of the agreement to conform to the specification provided pursuant hereto.

3) **PAYMENTS.** All payments in the respect of the purchase prices of Products or Services offered hereunder to be made by Buyer to ICM shall be reflected in invoices submitted to Buyer by ICM within five (5) days of shipment of such Products or Services. In the event that, for any reason, Buyer fails to make payment of the full amount of any invoice within such thirty (30) day period, the unpaid balance thereof shall bear interest, compounded monthly and payable upon demand, at the per annum rate equal to the current Prime Rate announced from time to time by Citibank, N.A. at its head office in New York City, plus five percent.

4) **SPECIFICATIONS.** All development, prototype or production program proposals offered by ICM imply the existence of reasonable compatibility between the stated objectives, technologies and specifications, and unless this proposal states to the contrary, the agreement between the parties is understood to be a best effort attempt by ICM in establishing the feasibility of Buyer's specifications. If, at any time, ICM finds that such compatibility of a functional criteria requested by Buyer is beyond the original scope and objectives presented in ICM's proposal, ICM shall give Buyer notice of any additional cost for said change in scope it deems necessary to Buyer's request. ICM will thereafter await Buyer's approval before proceeding.

5) **TOOLING AND OTHER PRODUCTION EQUIPMENT.** (a) Buyer shall provide to ICM, at Buyer's expense, DUT Device Under Test, any spare parts and components which ICM may propose as deemed reasonably necessary by ICM to design a quality Test Fixture, and Buyer delivery requirements. (b) All Products and/or designs are based upon our understanding of 'best efforts' which involve Engineering, assembly times, available materials, and techniques, including the following considerations: (i) Documentation: Minimal documentation from the Buyer may be accepted provided there is clear understanding as to the critical features of the program. First Article Inspection will be on critical features only, unless agreed upon otherwise. (ii) Quality: Focus will be on predetermined critical features.

6) **CANCELLATIONS OR RESTOCKING.** After receipt of your order, ICM will typically special order parts and/or conduct NRE or value added operations the cost of which may be irrecoverable except through fulfillment of your build-to-order P.O. Any purchase order placed for build-to-order Test Fixtures shall be considered non-cancellable except as follows: At the sole determination of ICM, cancellation may be permitted if for example materials purchased or work performed for the subject order can be reasonably expected to fulfill other near-term orders. In this case, a minimum 30% order cancellation fee, plus cost of materials, will apply. Any re-stocking requirements of shipped standard product will require a 30% restocking fee.

7) **LIMITATIONS OF ICM LIABILITY AND WARRANTY.** Anything in this proposal to the contrary not withstanding, ICM MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS OR SERVICES OFFERED, AND WITHOUT LIMITING THE FOREGOING, HEREBY EXPRESSLY DISCLAIM ANY WARRANT OR MERCHANTABILITY OR OF SUITABILITY OR FITNESS FOR ANY PURPOSE, IT BEING THE SOLE RESPONSIBILITY OF THE BUYER TO DETERMINE THE SUITABILITY OF ANY AND ALL PRODUCTS AND SERVICES OFFERED FOR THE USE OF BUYER. Notwithstanding the foregoing, Buyer shall have rights with respect to Products and Services which fail to conform to the specifications herein provided as are expressly provided in Section (2) hereof. IN NO EVENT SHALL ICM BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE PRODUCTS OR SERVICES FURNISHED HEREUNDER. In the event that ICM shall be deemed to be liable in respect of any Products or Services sold by it hereunder, for a period of 90 days from the date of delivery, such liability shall be limited at the election of ICM, repair or replacement of, or refund of payment for, non-conforming Products or Services on conformity with Section (2). ICM shall not be liable for any consequential damages or expenses incurred in repairs or alterations made outside of our factory without our prior written authorization nor shall ICM be responsible for any claims relating to any products to which any revisions or alterations have been made by others.

8) **PRODUCT LIABILITY.** (a) Buyer hereby agrees to indemnify and hold ICM harmless from and against any and all loss, expenses or damages (including, without limitation, legal fees and disbursements) arising from any claims or lawsuits which are made or asserted by any third person and which relate to any Product or Products, including, but not limited to, any claim or lawsuit based on any alleged defect in or injury to person or property caused by any Product or any allegation that any Product infringed upon the patent, proprietary rights of any person. (b) ICM shall give Buyer notice as soon as practicable of all claims and suits made or brought against it subject to the indemnity set forth in the foregoing paragraph (a) provided that failure to give such notice shall not affect ICM's right to indemnify hereunder except to the extent, if at all, that Buyer shall have been demonstrably financially prejudiced thereby. ICM shall, at Buyer's expense, cooperate with Buyer to the extent reasonably necessary in the defense of all claims and lawsuits relating to the Products.

9) **FORCE MAJEURE.** ICM shall not be responsible or liable to Buyer hereunder for any failure to perform or delay hereunder beyond the reasonable control of ICM, including but limited to, any action or request of any governmental authority, or governmental order or regulation, war, strike, lockout, riot, epidemic, disease, act of God, civil commotion, fire, earthquake, storm, unavailability of raw materials, technical inability or other infeasibility to manufacture any Products, or any other circumstances whatsoever, whether or not of the same nature as those specified herein. Anything in this agreement to the contrary notwithstanding, to the extent that during any period ICM is prevented or delayed in performing by reason of the foregoing, (a) Buyer's obligation to purchase Products from ICM shall be reduced proportionately, and (b) Buyer shall be entitled to purchase Products from others.

10) **GOVERNING LAW AND ENFORCEMENT.** (a) This proposal and all agreements made shall be governed by and construed in accordance with the laws of the State of Arizona. (b) All proceedings by any party hereto to enforce this Agreement or any provision hereto shall be brought in a state or federal court in the state of Arizona, and each party hereto hereby consents to the exclusive jurisdiction of such courts with respect to any such proceedings. (c) The parties hereby agree that in the event of breach by Buyer of its obligations set forth above, ICM will not have an adequate remedy at law, accordingly, shall be entitled to injunctive and other equitable relief.

11) **MISCELLANEOUS.** No modification or waiver of any of the terms of this Agreement shall be deemed valid unless it is in writing and signed by the party against which such modification or waiver is sought to be enforced. The failure of either party to insist upon the strict performance of any term of this Agreement, or the waiver by either party of any breach under this Agreement, shall not prevent the subsequent strict enforcement of such term nor be deemed a waiver of any subsequent breach. The provisions of this Agreement shall in all cases prevail over any inconsistent, different or additional provisions of any standard form or printed Purchase Order or any form of acceptance thereof used by either party, none of which shall have any force or effect. This Agreement may be executed in any number of counterparts, which may be separately executed by the parties hereto, each of which shall be an original but all of which taken together shall constitute one and the same instrument. In making proof of this Agreement it shall be necessary to produce or account for only one such counterpart signed by or on behalf of the party sought to be charged herewith. Should any section, provision or clause of this Agreement be invalid, illegal or unenforceable in any respect, that provision will be severed and the parties specifically intend that the remaining provisions will continue as valid, legal and enforceable, and these provisions will be integrated and interpreted in such a way as to give them the maximum enforceability and validity under the applicable law, while retaining the original intent of the parties with respect to such provisions. Buyer is and will at all times be an independent contractor and not an agent of ICM. This Agreement does not make either party the employee, agent, partner of legal representative of the other for any purpose. Buyer had no authority to contractually or otherwise commit ICM to any obligations to third parties. This agreement is not assignable in whole or in part by either party whether by way of assignment, operation of law, merger or consolidation or otherwise without prior written consent of the other party. Any assignment or transfer or attempt to do so by either party without such consent will, at the other party's option, entitle the other party to immediately terminate this Agreement.

12) **CALIBRATION COEFFICIENTS:** ICM currently uses a HP-8510C and/or a HP-8722 network analyzer for testing ICM fixtures and calibration kits. ICM provides the cal coefficient data for the HP-8510C and HP-8722 (this format also applies to HP-8720) to our customers as needed. ICM understand that not all of our customers have either of these analyzers and the supplied data format is not usable. In this case, we can provide the data in written form so that the customer can input the data manually for the type of analyzer they have. ICM does not have instructions for every type of analyzer available. Depending on the level of knowledge buyer has with their analyzers, Buyer may be required to contact the relevant Analyzer manufacturer or utilize Analyzer user manual.

13) **EAR/ITAR COMPLIANCE:** The Buyer shall be aware that products supplied by Inter-Continental Microwave are subject to U.S. export control regulations. Buyer shall not import, export, or re-export for any activity, end-use, or to individuals in violation of U.S. export control law. It is the Buyers responsibility to comply with all US EAR/ITAR rules and regulations. Buyer shall submit an End Use Statement when requested by ICM.