

TERMS AND CONDITIONS OF SALE

The Terms and Conditions of Sale contained herein (the "Agreement") constitute the entire agreement between POLYPHASE MICROWAVE INC., Inc. ("Seller" or "POLYPHASE MICROWAVE INC.") and the party which places a purchase order with POLYPHASE MICROWAVE INC. ("Buyer") and shall control all purchases of Products (as hereinafter defined) by Buyer from POLYPHASE MICROWAVE INC. POLYPHASE MICROWAVE INC. will not be bound by any terms of Buyer's purchase order unless expressly agreed to in writing by POLYPHASE MICROWAVE INC. No form of acceptance except POLYPHASE MICROWAVE INC.'s written or electronic acknowledgment provided to Buyer or POLYPHASE MICROWAVE INC.'s commencement of performance shall constitute valid acceptance of Buyer's purchase order; any such acceptance is expressly conditioned on Buyer's assent to the terms hereof and the exclusion of all additional or different terms except as may be set forth in a written agreement expressly superseding these terms. Buyer shall be deemed to have assented to the terms hereof, whether or not previously received, upon accepting delivery of anything shipped by POLYPHASE MICROWAVE INC. If tender of these terms is deemed an offer, acceptance is expressly limited to the terms hereof and POLYPHASE MICROWAVE INC. hereby gives notice of its objection to any additional or different terms proposed by Buyer in its purchase order or any other documents.

1. PRODUCTS

"Product(s)" shall mean any products identified on (a) Seller's quotations or (b) Seller's acknowledgments of a purchase order. In the event of any inconsistency between (x) the quotation and the acknowledgment or (y) the purchase order and the acknowledgment, the acknowledgment shall control.

2. ORDERS

Buyer shall purchase Products by issuing a written purchase order (the "Order") signed by an authorized representative, indicating specific Products, quantity, unit price, total purchase price, shipping instructions, bill-to and ship-to addresses, tax exempt certificates, if applicable, and any other special instructions. Any contingencies contained on such order are not binding upon Seller. Seller will accept or reject orders according to its then-current procedures. All Orders are subject to acceptance in writing by Seller.

3. PAYMENT

Payment terms are net 30 days from invoice date for customers with approved credit. Accounts more than 30 days past due will be subject to a late charge at the rate of 1½% per month or the highest rate permitted by applicable law, whichever is lower. As security for the full and prompt payment, in cash, of any amounts due under this Agreement, Buyer hereby grants to Seller a security interest in any goods furnished by Seller to Buyer. Buyer hereby irrevocably designates and appoints the Seller as its agent and attorney-in-fact to act for and on Buyer's behalf to execute and file any document and to do all other lawfully permitted acts to perfect this security interest or protect Seller's interest in the goods with the same legal force and effect as if executed by Buyer.

4. DELIVERY TERMS

Delivery terms shall be F.O.B. Bloomington, Indiana. Delivery to carrier at point of origin shall constitute delivery to Buyer and thereafter the shipment shall be at Buyer's risk. Claims for loss or damage to products in transit should be made to the carrier and not to Seller.

5. CLAIMS

Rejection of non-conforming products must be made by Buyer in writing within 30 days of receipt, and all defects ascertainable at time of giving notice shall be stated with particularity or be deemed waived. Under no circumstances shall products be returned to Seller without Seller's written permission. A claim that products are non-conforming shall not entitle Buyer to deduct any sum from any invoice unless such claim has been allowed in writing. Invoices shall be paid in full in accordance with the terms of sale and in the event of subsequent allowance of any claim Seller shall promptly pay to Buyer the amount so allowed.

6. LIMITATIONS ON WARRANTIES

Seller warrants its products will be free from defects in material and workmanship for a period of two years from the date of shipment. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AND SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Any description of the products, whether made orally or in writing by Seller or Seller's agents, specifications, samples, models, bulletins, drawings, diagrams 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 warranty. Any suggestions by Seller or Seller's agents regarding use, application or suitability of the products shall not be construed as an express warranty unless confirmed to be such in writing by Seller.

7. LIABILITIES AND CONSEQUENTIAL DAMAGES

Buyer agrees that if products are non-conforming, Buyer's exclusive remedy shall be one of the following, at Seller's option: a) repair or replacement of the non-conforming products or b) repayment to Buyer of the purchase price. Standard FOB origin terms apply. IN NO EVENT SHALL BUYER BE ENTITLED TO ANY CONSEQUENTIAL, INCIDENTAL OR CONTINGENT DAMAGES OF ANY KIND, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORIES OF LAW, WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO.

8. LIMITATIONS ON SUITS AND ACTIONS

No action or suit to enforce Buyer's rights or remedies arising from this sale shall be commenced later than one year from the date of shipment.

9. APPLICABLE LAWS

All laws and regulations required to be incorporated in agreements of this character are incorporated herein by this reference. Seller certifies that these products were produced in compliance with all applicable requirements of Section 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor under Section 14 thereof. All orders, sales and these terms and conditions shall be governed by and construed according to the laws of the state of Indiana, excluding any choice of law rules. Seller shall be entitled to recover reasonable attorneys' fees and expenses related to collection of any amounts owed in connection with products sold to Buyer or enforcement of these terms and conditions, whether or not a suit is filed.