



TITLE: <b>Terms and Conditions of Purchase</b>	
DOCUMENT #: <b>1021691</b>	REV #: <b>C</b>
DOCUMENT CLASS: <b>K-PURCH PRC</b>	
RESPONSIBLE DEPT: <b>Purchasing</b>	REF. <b>QMS 7.4</b>

**TERMS AND CONDITIONS OF PURCHASE**

K&L Microwave and the Supplier are committed to conduct operations ethically and in compliance with the laws of the United States and any other country in which they do business. This includes laws against commercial bribery, payments to government officials and money laundering, and compliance with local tax laws, import/export regulations, and laws governing the payment of applicable customs and duties.

**Acceptance-Agreement**

Seller's commencement of work on the products, or shipment of the products, which are the subject to this purchase order, whichever occurs first, shall be the effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained on the face and back hereof. Any proposal, form or other document of Seller which contains additional or different terms from this purchase order and the terms and conditions of purchase here set forth ("Terms") or any attempt by Seller to vary in any degree any of the Terms in Seller's acceptance is hereby objected to and rejected and shall not be part of the contract between Purchaser and Seller.

**Termination for Convenience of Purchaser**

Purchaser reserves the right to terminate this purchase order or any part hereof for its sole convenience at any time. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of notice of termination, or for any costs incurred by Seller's suppliers or subcontractors which Seller or such suppliers or subcontractors could have reasonably avoided.

**Termination for Cause**

Purchaser may also terminate this purchase order or any part hereof at any time for cause in the event of any default by the Seller or if the Seller fails to comply with any of the Terms of this purchase order. Late deliveries, deliveries of products which are defective or which do not conform to this purchase order, and failure to provide Purchaser, upon request, reasonable assurances of future performance shall all be causes allowing Purchaser to terminate this purchase order for cause. In the event of termination for cause, Purchaser shall not be liable to Seller for any amount, and Seller shall be liable to Purchaser for all damages sustained by reason of the default which gave rise to the termination.

**Proprietary Information-Confidentiality-Advertising**

Seller shall consider all information furnished by Purchaser to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this purchase order, unless Seller obtains prior written permission from Purchaser to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller for Purchaser in connection with this purchase order. Seller shall not advertise or publish the fact that Purchaser has contracted to purchase goods from Seller, nor shall any information relating to the purchase order be disclosed without Purchaser's prior written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Purchaser shall be deemed secret or confidential and Seller shall have no rights against Purchaser with respect thereto, except such rights as may exist under patent laws.

**Warranty**

Seller expressly warrants that all products or services furnished pursuant to this purchase order and its Terms shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Seller warrants that all such products or services will conform to any statements made upon the containers or labels or advertisements for such products or services, and that all products will be adequately contained, packaged, marked and labeled. Seller warrants that all products or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which products or services of such kind are normally used. If Seller knows, or has reason to know, the particular purpose for which Purchaser intends to use the products or services, Seller warrants that such products or services will be fit for such particular purpose. Seller warrants that products or services furnished pursuant to this purchase order will conform in all respects to applicable sample. Inspection, test, acceptance or use of the products or services furnished hereunder shall not affect the Seller's obligation under any of these warranties, and such warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to Purchaser, its successors, assigns and customers, and users of products sold by Purchaser. Seller agrees to replace or correct defects of any products or services not conforming to the any of the foregoing warranties promptly, without expense to Purchaser, when notified of such nonconformity by Purchaser, provided Purchaser elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming products or services promptly, Purchaser, after reasonable notice to Seller, may make such corrections or replace such products and services and charge Seller for the cost incurred by Purchaser in doing so. Seller warrants that the prices for the products sold Purchaser hereunder are not less favorable than those currently extended to any other customer for the same or similar products in similar quantities. In the event Seller reduces its price for any product during the pendency of this purchase order, Seller agrees to reduce the prices to Purchaser correspondingly. Seller warrants that prices shown on this purchase order shall be complete, and no additional charges of any type shall be added without Purchaser's express, prior written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, customs duties, taxes, storage, insurance, boxing and crating.



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#### **Force Majeure**

Purchaser may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such products at the direction of the Purchaser and shall deliver them when the cause affecting the delay has been removed. Purchaser shall be responsible only for Seller's direct additional costs in holding the products or delaying performance of this purchase order at Purchaser's request. Causes beyond Purchaser's control shall include acts of God, government action or failure of the government to act where such action is required, strike or other labor trouble, fire, or unusually severe weather.

#### **Patents**

Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Purchaser or its agents, customers, or other vendors for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark, or appearance of products or services provided hereunder, and Seller further agrees to indemnify Purchaser, its agents and customers against all expenses, losses, royalties, profits and damages, including court costs and attorneys' fees, resulting from any such suit or proceeding, including any settlement. Purchaser may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the reasonable costs of such representation shall be paid by Seller.

#### **Insurance**

In the event that Seller's products or services hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller, to be done on Purchaser's property, or property of Purchaser's customers, the Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the Purchaser. Seller shall maintain, or shall ascertain that persons under contract to Seller shall maintain, as the case may be, all necessary insurance coverage's, including public liability and Workers' Compensation insurance. Seller shall indemnify and save harmless and defend Purchaser from all claims or liabilities arising out of the work covered by this paragraph.

#### **Indemnification**

Seller shall defend, indemnify and hold harmless Purchaser against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any breach of the Terms of this purchase order or any defect in the products and/or services purchased pursuant hereto, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of the Seller.

#### **Changes**

Purchaser shall have the right at any time to make changes in drawings, designs, specification, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for performance of this purchase order, an equitable adjustment shall be made and the parties shall modify this purchase order in writing accordingly. Seller agrees to accept any such changes subject to this paragraph.

#### **Counterfeit Items**

Purchase parts may not be or contain Counterfeit Items. A Counterfeit Item is defined to include, but is not limited to, an item that is an illegal or unauthorized copy or substitute of an Original Equipment Manufacturer ("OEM") item; an item that does not contain the proper external or internal materials or components required by the OEM or that is not constructed in accordance with OEM design; an item or component thereof that is used, refurbished or reclaimed but the Seller represents as being a new item; an item with a label or other marking intended, or reasonably likely, to mislead a reasonable person into believing a non-OEM item is a genuine OEM item when it is not.

#### **Conflict Minerals**

Supplier has read and acknowledged Customer's "Conflict Mineral Policy" and "Supplier Code of Conduct." Supplier shall not provide any tantalum, tin, tungsten or gold or their derivative metals or minerals (the "conflict minerals") mined from Democratic Republic of the Congo, Angola, the Republic of the Congo, Uganda, Rwanda, Burundi, Tanzania, Zambia, South Sudan and the Central African Republic (the "covered countries") where such conflict minerals directly or indirectly finance or benefit illegal armed groups. With each shipment, Supplier shall provide Customer with evidence of Supplier's due diligence performed in compliance with this provision for the products and lots received. Supplier will cooperate in reasonable requests of Customer for additional information on smelter sourcing as may be required to meet Customer's sales requirements.

#### **Inspection/Testing**

Payment for the products delivered hereunder shall not constitute acceptance thereof. Purchaser shall have the right to inspect such products and to reject some or all of such products which are in the Purchaser's judgment defective or non-conforming. Products rejected and products supplied in excess of quantities called for herein may be returned to Seller at its expense, in addition to Purchaser's other rights. Purchaser may charge Seller all expenses of unpacking, examining, repacking and re-shipping such products. In the event Purchaser receives products the defects or nonconformities of which are not apparent on examination, Purchaser reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve Seller in any way from the obligation of testing, inspection and quality control.



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**Right of Entry**

The Seller hereby grants to Purchaser usual “right of entry” to its applicable business premises, or those of its contractors and sub-contractors, as the case may be. Purchaser shall use such right of entry so as to allow the Purchaser, Purchaser’s customers, as appropriate, and applicable regulatory agencies, to determine and verify the quality of work, records, and material at any applicable location.

**Entire Agreement**

This purchase order, and any documents or agreements referred to on the face hereof, constitute the entire agreement between the parties.

**Assignments and Subcontracting**

No part of this purchase order may be assigned or sub-contracted by Seller or its agents without prior written approval of Purchaser.

**Set-off**

All claims for money due or to become due from Purchaser shall be subject to deduction or set-off by the Purchaser by reason of any counterclaim arising out of this or any other transaction between Purchaser and Seller.

**Packaging**

All products provided under this purchase order shall be suitably prepared and packed for shipment so as to assure safe delivery, the lowest transportation rates, and to meet carrier’s requirements unless otherwise stipulated in this purchase order. No charge shall be allowed for packing, crating, or carriage unless stated in this purchase order. Each container shall be clearly marked to show the Purchaser’s applicable purchase order number. A packing sheet showing the applicable purchase order number must be included in each container or single unit of shipment, or with each truckload shipment.

**Shipment**

If in order to comply with Purchaser’s required delivery date, it becomes necessary for Seller to ship by a more expensive means than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by Seller, unless the necessity for such re-routing or expedited handling has been caused solely and exclusively by the Purchaser.

**Waiver**

Purchaser’s failure to insist on performance of any of the Terms of this purchase order or to exercise any right or privilege, or Purchaser’s waiver of any breach hereunder, shall not constitute a subsequent or continuing waiver of any other, or the same, Terms, rights or privileges connected herewith.

**Delivery**

Time is of the essence of this purchase order, and if delivery of items or rendering of services is not completed by the time promised, Purchaser reserves the right without liability, in addition to its other rights and remedies hereunder, to terminate this purchase order by notice to Seller, effective as to items not yet shipped or services not yet rendered, and to purchase substitute items or services elsewhere and charge the Seller with any loss incurred.

**Limitation on Purchaser’s Liability- Statute of Limitations**

In no event shall Purchaser be liable for anticipated profits or for incidental or consequential damages. Purchaser’s liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this purchase order or from the performance or breach thereof shall in no case exceed the price allocable to the products or services or unit thereof, which gives rise to the claim. Purchaser shall not be liable for penalties of any description. Any action resulting from any breach on the part of Purchaser as to the products or services delivered hereunder must be commenced within one year after the cause of action has accrued.

**Conforming to Safety and Ethics**

In accordance with AS9100, Rev D, section 8.4.3 m., it is important that the seller provides products and/or services that conform to all stated requirements, including specified product safety requirements. It is required that seller conducts business with K&L Microwave in an ethical manner at all times (reference [www.klmicrowave.com](http://www.klmicrowave.com) Supplier Code of Conduct).