



## TERMS & CONDITIONS OF SALE



### 1. DEFINITIONS:

- “Seller“ shall mean Alaris USA LLC DBA or assumed name of mWAVE Industries LLC with office in Windham, ME.
- “Customer“ shall mean the buying client who has placed the order on the seller.
- “Order“ shall mean the purchase order or contract in writing concerning the supply of the product and appendices.
- “Price“ shall mean the price (s) of the product as stated on the Order.
- “Product“ shall mean the objects and services which are to be supplied under the Order
- “In writing“ shall mean communication by document signed by both parties or by letter, fax, electronic mail and by such other means as agreed to by the parties.

### 2. APPLICATION:

These terms shall apply to every agreement between the seller and the customer.

These terms constitute the general terms and condition of sale of each agreement.

These terms and conditions shall take precedence of over any terms and conditions which may be contained in the customer’s order or other documentation.

Occurrence of any of the following events: placement of Order; receipt of order acknowledgement; dispatch of Goods against the Order; informing the customer of the dispatch or delivery of the Goods, shall be deemed to constitute acceptance by the customer of the conditions of the Order and these General Terms and conditions of sale. The time and place of acceptance shall be the time and place of the first occurrence of any of the above events.

These terms and conditions may only be altered with the express written agreement of the seller.

### 3. ACCEPTANCE:

All orders must be placed against a valid Seller quotation and must reference the Seller Quotation number.

Acceptance of, or order resulting from, proposals or quotations, shall not be binding upon Seller, which is, until formal confirmation by Seller.

### 4. CHANGE ORDER OR CANCELLATION:

Any order or contract may be changed or canceled by the Purchaser but only upon prior agreement with Seller as to the amount of the change order or cancellation charge. Seller will promptly inform Purchaser as to the amount of such charge.

All change order or cancellations shall be communicated to Seller in writing or email.



## **5. TERMS OF PAYMENT:**

The prices payable by the customer to the seller for the goods shall be the ruling prices stipulated in writing by the seller at the time the order for the goods is placed.

All invoices are payable within thirty days after invoice date or date services rendered, unless other terms are specified and/or agreed to by Seller. In all cases, if shipment delay is requested by the Purchaser, payment shall become due at Seller's option, from the date on which Seller is prepared to make shipment.

The customer shall not be entitled to withhold any sum payable to the seller or to make any deductions there from or set any such sum off against any sum, which is actually or allegedly owed to the customer by the seller.

Payment shall be made in U.S. dollars, and prices do not include sales, use, excise, or similar taxes. All such taxes shall be paid by the Purchaser.

## **6. OVERDUE PAYMENTS:**

Interest charges may be due and charged on all invoices remaining overdue for 15 days or more. Interest shall be computed at the rate of 1 1/2% per month (18% per annum) and shall be applied to each overdue month or fraction thereof.

Purchaser shall be liable for all expenses related to collection of past due amounts, including attorneys' fees.

## **7. SHIPMENT AND PASSAGE OF TITLE:**

Unless otherwise advised, shipment will be made in terms of FCA at Factory (INCOTERMS 2010). As an accommodation when specifically requested by customer, Seller will prepay transportation charges, which will be invoiced separately.

The customer can request Seller to make use of the customers shipping account.

In the absence of specific shipping instructions, method of shipment will be determined by Seller. Unless directed otherwise by the Purchaser, full invoice value will be declared for deliveries by railway express, air express, and air freight, and insurance will be taken out based on invoiced value. No insurance will be provided by Seller on rail freight or motor freight shipments. In all cases, Seller's responsibility (except as stated in our warranty) ceases, and, except in the case of conditional or C.O.D. sales, title shall pass upon delivery of the material to the carrier.

## **8. EXPORT CONTROL:**

The products sold to customers by Seller are subject to US export control laws and regulations. Products that are either commercial or dual-use may be controlled under the United States Export Administration Regulations (EAR). Products that are inherently military in nature may be controlled under the International Traffic in Arms Regulations (ITAR). Customer shall at all times comply with the EAR and the ITAR, as well as any other applicable law or regulation governing the export, transfer, use or re-export of the products. Customer agrees to comply with all EAR, ITAR and applicable export laws, restrictions and regulations of the United States or foreign agencies or authorities, and shall not export, or transfer for the purpose of re-export, any product to any prohibited or embargoed country.



## 9. WARRANTIES:

Equipment; Seller warrants all equipment of its manufacture to be free from defects caused by faulty material or poor workmanship, but its liability under said warranty is limited to the obligation to repair or at Seller's option, to replace without charge, F.O.B. Windham, Maine, USA any part found to be defective under normal use and service within one (1) year from date of invoice provided:

- Seller is promptly notified in writing upon discovery of such defects.
- The original parts are returned to Seller, Windham, Maine, USA, transportation charges prepaid, and,
- Seller's examination shall disclose to its satisfaction that such defects have not been caused by abuse after delivery to the original freight carrier.
- All specifications are subject to change without notice. Equipment not manufactured by Seller carries the vendor's warranty. This warranty is expressly in lieu of all other warranties, express or implied (except as to title) and constitutes all of Seller's liability in respect to its equipment.

## 10. RETURNS OF MATERIALS:

Adherence to the specified return procedure is mandatory in order to obtain proper replacement of warranty material, repairs, or proper credit. Seller assumes no responsibility whatsoever nor any liability for material returned without prior authorization.

A request for; **A)** return of any items defective under terms of warranty or **B)** return of items for repair and should be made directly to Seller, assumed name of MWAVE Industries LLC, 33R Main Street, Windham, Maine 04062 USA, Attention: Coordinator, Account manager. This request, submitted prior to the shipment of the items to be returned, should contain the model, item, and serial number; item description; date of purchase including purchase order and Seller Sales Order (SO) number, request for repair or statement as to reasons for return. The request for return should also contain the name, address, and telephone number of the returning party so that information may be submitted as required. If any approval for return is granted, a return material authorization form and RMA number with shipping instructions will be forwarded. The RMA number should be affixed to the item and also marked on the outside of the carton. The items should be properly packed and returned to Seller, transportation prepaid. In some cases, directions to destroy the material may be given in lieu of return. The allocation of and RMA number does not constitute an acknowledgement of responsibility or liability by Seller.

When specifically requested, in certain cases, items replacing warranty failures may be shipped prior to the return of the defective item. In such cases, the customer is billed at the time of shipment, and if inspection of material after receipt discloses a failure within the terms of the warranty, a credit will be issued to cancel previous billing. Seller assumes no responsibility nor liability for any items returned not complying with this return procedure.

## 11. INTELLECTUAL PROPERTY:

All intellectual property of the product supplied to the customer is retained by the seller. The term "Intellectual Property" shall include all inventions, improvements, know-how, product ideas, new products, discoveries,



methods, developments, software and works of authorship which are or were generated, created, conceived, reduced to practice or became owned in connection with the Order.

Any information and works of authorship received by the customer shall not, without the consent of the seller, be used for any other purpose than that for which they were provided. They may not, without the consent of the seller, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

**12. TAXES:**

The prices given do not include any Federal, State, Provincial or local taxes based upon or measured by sales or use. Any such taxes applicable and in effect at the time of shipment are the responsibility of the purchaser.

**13. LIMITATIONS OF LIABILITY AND REMEDY:**

In no event shall Seller be liable for any special, incidental or consequential damages of any nature including, but not limited to, damages resulting from loss of profit or revenue, recall costs, claims for service interruptions or failure to supply downtime, testing, installations or removal costs, costs of substitute products, property damage, personal injury, death or legal expenses. Customer's recovery from Seller for any claim shall not exceed the purchase price paid by Customer for the goods, excluding any charges stated separately from the product price on the invoice, irrespective of the nature of the claim, whether in warrant, contract or otherwise. Customer shall indemnify, defend and hold Seller harmless from any claims brought by any party regarding products supplied by Seller and incorporated into the customer's product.

**14. MINIMUM ORDER VALUE:**

Due to the need for the business to cover related operations costs of each product on offer a minimum order value of \$2,500 shall apply. The minimum order value excludes any taxes, freight charges and levies.

**15. FORCE MAJEUR:**

Except for defaults of subcontractors at any tier, Seller shall not be in default because of any failure to perform this order under its terms if the failure arises from causes beyond the control and without the fault or negligence of Seller. Examples of these causes are:

- acts of God or of the public enemy;
- acts of the Government in either its sovereign or contractual capacity;
- fires;
- floods;
- epidemics;
- quarantine restrictions;
- freight embargoes;
- unusually severe weather, and
- labor strikes

**16. RETENTION OF TITLE:**

The Product shall remain the property of Seller until paid for in full to the extent that such retention of title is valid under the relevant law.



The Customer shall at the request of the Seller assist him in taking any measures necessary to protect the Supplier's title to the Product.

**17. APPLICABLE LAW:**

The construction, validity and performance of obligations in terms of this agreement, and any other terms and/or conditions duly agreed between the seller and customer, and the determination of another dispute between those parties arising out of the alleged improper or non-performance thereof, based on any cause of action whatsoever shall be governed in all respects by the Laws of the State of Maine.