

Microcom Corporation – Standard Conditions of Purchase

Document #: S90006-1000

Revision Date: 4/1/23

1. **General**

Each Purchase Order ("Order") of Microcom for the products and/or services covered by the Order (collectively, whether products and/or services, "Products") together with any models, drawings, technical processes, agreements, specifications, standards or other documents or information specified in, attached to or otherwise applicable to the Order (collectively, "Specifications") and including these Standard Conditions of Purchase ("Conditions"), constitutes the COMPLETE AND FINAL AGREEMENT of Microcom and the supplier to whom the Order is addressed ("Supplier") and may not be added, modified, superseded or altered except by written agreement or modification signed by Microcom's authorized representative, notwithstanding any additional or other proposals or terms and conditions which may now or in the future appear on Supplier's quotations, acknowledgments, invoices or other forms (notification of objection thereto being given hereby), and notwithstanding any acceptance of shipments, payments or other similar acts of Microcom.
2. **Orders**
 - A. **Acceptance.** Prompt acceptance of an Order by returning the acknowledgement copy thereof or other affirmative response to Microcom's Purchasing Department (purchasing@microcom.com) is requested but, in any event, any shipment or delivery of any Products ordered or other tender of performance of Supplier, or Supplier's failure to notify Microcom of a rejection within five (5) days from the issue date, shall be taken as Supplier's assent to and acceptance of the Order. In the event of a direct conflict between the Order and the Specifications, the provisions of the Specifications will prevail.
 - B. **Order Changes.** Microcom shall have the right at any time to change any Order as to Specifications, delivery, quantity, packaging or means of shipment. Supplier's receipt of Microcom's notice of change without response received by Microcom within ten (10) days of Microcom's notice shall be Supplier's acceptance of the change without any price or other adjustments to the Order. Otherwise, Microcom and Supplier shall come to a mutually agreeable solution depending on the status of the Order. If the change affects the cost of the Product, Supplier must submit a quote to Microcom's Purchasing department within ten (10) days of the notice of change specifying the additional cost of the revision. Supplier shall make no change in the Products or any material, service or labor covered by the Order without Microcom's prior written consent.
3. **Performance**
 - A. **Delivery.** Supplier will pack, mail, label and ship all Products in a commercially reasonable and appropriate manner to ensure the lowest transportation cost for which Microcom is responsible, if any, in the absence of specific instructions in the Order. Unless otherwise specified in the Order, all shipments are F.O.B. Microcom's place of delivery or destination; provided, however, that title and risk of loss of Products shall not shift to Microcom until Microcom provides Supplier receipt of acceptance. Microcom's count of the Products will be final as to all shipments not accompanied by a packing list. Supplier will inform Microcom immediately of any occurrence which may result in any change in delivery time or quantity and of corrective measures taken to minimize the effect thereof.
 - B. **Quantity.** Quantity of Products ordered must not be exceeded without permission first obtained from Microcom. Excess quantities shipped without permission may be returned at Supplier's expense and risk of loss, including all freight and handling. Quantity is of the essence for all Orders; provided that if Supplier can ship a portion of the Products on or before the delivery date, Supplier must do so, but no earlier than fifteen (15) days prior to the delivery date without Microcom's express consent.
 - C. **Timing.** Microcom may refuse or return the Products, or any unit thereof, and cancel all or any part of the Order, if Supplier delivers early, delivers late, or fails to deliver all or any part of the Products in accordance with the Order, and any cost in keeping the Products prior to such return and the cost of returning the same, shall be Supplier's expense. Acceptance of any part of the Order, or partial or full payment made by Microcom, shall not bind Microcom to accept future nonconforming shipments. Time is of the essence for all Orders.
 - D. **Containers.** No charges will be allowed for non-returnable packages, bags, containers, boxing, crating, or cartage (collectively "Containers") unless otherwise specified in the Order. Packaging and Containers shall be specifically addressed as needed. Packaging and Containers are a critical part of the Order, and may be unique to each Product number. Products shall be packaged to prevent loss or damage, including cosmetic damage. Specific packaging and Containers may be defined in a separate document for a specific Product number. The maximum weight for a standard Container of Product is forty (40) pounds. A packing list must be included with each shipment containing details of the shipment including but not limited to Microcom and Supplier's (if any) Product (part) number, complete part number as provided on Microcom Order, purchase order number, quantity and Product (part) description, and Containers must be labeled on the OUTSIDE with Supplier name/ID number, Product (part) and purchase order number, quantity and Product (part) description.
 - E. **Cosmetic Requirements.** Supplier must adhere to all required cosmetic Specifications including but not limited to (1) plating: corrosion, scratches and obvious watermarks are unacceptable on plated Products (parts); (2) plastic: flash, blemishes and contamination are unacceptable on plastic Products (parts); (3) sheet metal obvious scratches and avoidable tool marks are unacceptable on sheet metal Products (parts); (4) powder coat and paint: light/heavy coating, chips, and flaking are unacceptable on powder coated and painted Products (parts); and (5) Microcom's Cosmetic Acceptance Criteria Chart for Products (parts), as the same may be amended from time to time, which can be found at <https://www.microcomcorp.com/termsandconditions/cosmetic-acceptancecriteriachart>.
4. **Sub-contractor Requirements**

If Supplier elects to sub-contract work, Supplier is required to obtain Microcom's prior approval and shall remain responsible for any and all issues related to the Products and/or the applicable Orders. Supplier is required to inspect the quality and conformance to Specifications of the sub-contractor's work prior to shipping the same to Microcom.
5. **Testing, Reporting, Composition and Inspection**
 - A. **Testing.** If electrical testing (ex: flying probe; bed of nails) is required, it is typically paid for as NRE. When Microcom pays for electrical testing, all Products specified for the testing shall be 100% tested at the Supplier's location.
 - B. **Reporting.** Supplier will submit to Microcom all production, functional and quality control test reports and other data as may be requested by Microcom from time to time concerning the Products. Microcom may enter Supplier's premises during business hours for inspections and Supplier agrees to fully cooperate with Microcom in making such inspections.
 - C. **Composition of Products.** If requested by Microcom, Supplier shall promptly furnish to Microcom in such form and detail as Microcom may direct: (1) a list of all materials/ingredients in the Products; (2) the amount of one or more materials/ingredients; and (3) information concerning any changes in or additions to such materials/ingredients. Prior to shipment of any Products, Supplier shall furnish to Microcom sufficient written warnings and notices of any hazardous materials/ingredients which are a part of the Products, together with such special handling instructions as may be required by applicable laws.
 - D. **Inspection.** All Products are subject to Microcom's final inspection, test and approval which shall be made within a reasonable time after receipt, irrespective of day of payment, and may be done via sampling. Any Products which are not fully satisfactory to Microcom may be rejected by notice to Supplier, and Microcom reserves the right to reject the entire shipment if a sample of defective Products is found during incoming inspection. Rejected Products are to be replaced with conforming Products within the fastest reasonable time after notice of rejection, or at the option of Microcom, the quantity of Products may be reduced by the number of rejected Products, or the Order cancelled in its entirety. If an Order is urgent, and a minimum number of Products is required, Microcom can sort the Products in house, and bill Supplier for the labor and other charges.
6. **Supplier's Warranties**
 - A. **Supplier Warranties.** Supplier warrants that the Products furnished pursuant to the Order will: (1) for a period of not less than one year from delivery, be free from defects in material and workmanship; (2) not be less than merchantable and fit for the particular purpose(s) known by or disclosed to Supplier; (3) meet and conform to the Specifications; (4) comply with all applicable federal, state and local laws, regulations, rules, ordinances, orders and the like; and (5) be free from all lawful claims of any person of any description, including all security interests, liens and encumbrances. In addition, Supplier warrants that all workers utilized by Supplier to perform work pursuant to the Order shall be in full compliance with all immigration and employment eligibility requirements under applicable law.
 - B. **Warranty Terms.** These warranties shall survive inspection, acceptance and payment. Payment by Microcom shall not constitute acceptance of the Products or waive any rights of Microcom under the Order. In the event that any Products are not in compliance with the warranties stated herein, Microcom may at Supplier's cost and expense, and without limitation or exclusion of any other right or remedy, return the defective Products to Supplier at Supplier's risk of loss for a full refund by Supplier and/or, at Microcom's option, require Supplier to repair, correct or replace the defective Products. If mutually agreed upon, rework can be performed at Microcom and billed to Supplier.
7. **Termination of Supply**

In the event Supplier intends to discontinue the manufacture or supply of Products, Supplier shall give written notice to Microcom not less than 1 (one) year prior to such discontinuance and shall, at Microcom's option, (A) advise Microcom regarding an equivalent alternative source of supply; and/or (B) manufacture and supply the stock quantity of Products which Microcom will require in the future after such discontinuance.
8. **Price, Taxes and Payment**
 - A. **Price.** All prices shall be F.O.B. Microcom's place of delivery (destination), unless otherwise specified in the Order, inclusive of applicable taxes, excises, duties, tariffs, quotation fees or any other governmental impositions related to the production, sale or transportation of the Products, in compliance with any ceiling or other limitation of price established by any governmental authority; and subject to increase only with prior written consent of Microcom. Reductions in price of Products ordered, occurring between the date an Order is issued by Microcom and the time of shipment by Supplier, shall accrue to the benefit of Microcom. If Microcom stipulates no price in an Order, the price shall not be higher than Supplier's current published price, or that last quoted or charged to Microcom by Supplier, whichever is lower. If Microcom stipulates a price in an Order, such price is final and any increases in Supplier's published price shall be ineffective as to the issued Order.
 - B. **Taxes.** Microcom and Supplier will cooperate in obtaining such certificates of exemption from any sales, excise or other taxes to which either of the parties may be entitled.
 - C. **Payment.** Unless otherwise specified in an Order, Microcom shall make payment within thirty (30) days after receipt of a correct invoice and shall be entitled to all quoted discounts thereon. Invoices shall indicate Microcom's purchase order number, shall be mailed to Microcom no earlier than upon shipment of Products and accompanied by an appropriate packing list and bill of lading if shipped by truck, freight, or less than truckload. Each of Microcom's Orders shall be separately invoiced.
9. **Microcom's Property and Confidentiality**
 - A. **Microcom's Property.** Unless otherwise specified in separate written agreement between Microcom and Supplier all tools, equipment, dies and jigs, drawings, specifications, information and other material of every description furnished to Supplier or paid for by Microcom ("Microcom's Property") shall be and remain the sole property of Microcom, held by Supplier at Supplier's risk, plainly marked and/or otherwise clearly identified by Supplier as "Property of Microcom Corporation" with tool number designated by Microcom. Microcom's Property shall be stored separate and apart from Supplier's property, not moved without Microcom's prior written approval, insured by Supplier with full fire and extended coverage insurance for the replacement value thereof, treated as confidential and used so as to prevent disclosure inconsistent herewith, shall not be used except pursuant to the Order, shall be subject to Microcom's inspection at all reasonable times and immediate possession on demand. Supplier specifically waives as consideration for the Order, any lien or other possessory right with respect to Microcom's Property and, in any event, Microcom's Property shall be returned to Microcom simultaneously with final shipment or termination under the Order.
 - B. **Confidentiality.** Any unpatented knowledge or information concerning Microcom's products, production or other methods, processes, scheduling, sources of supply, customers, marketing, or otherwise which Microcom may disclose to Supplier attendant to or incident to any Order or otherwise in connection with the relationship between Supplier and Microcom, or as to which Supplier may otherwise come into possession, shall be retained in confidence by Supplier, used by Supplier only in connection with an Order, and to the extent represented by or in samples, writings, drawings or other tangibles, shall be returned to Microcom at any time upon demand. The provisions of this Section shall survive the performance of the Order.
10. **Indemnification**
 - A. **General.** Supplier shall defend, indemnify and hold Microcom harmless from any and all claims, demands, lawsuits and liability for loss, costs, damages, fines, penalties and expenses of every kind and nature, threatened, incurred, arising out of or relating to the Products, Supplier's performance hereunder, any breach of the Order, or by reason of: (1) the alleged infringement of any patent, trade name, trademark or copyright related to sale or use of the Products; and/or (2) any alleged or actual breach of Supplier's warranties within Section 6.
 - B. **Recall.** In the event of any inquiry or investigation by any governmental agency with respect to any defect of the Products, or any recall of the Products or any product containing the Products because of a defect of the Products, Supplier shall indemnify and hold Microcom harmless from any loss, damage, liability, suit, claim, demand, cost and expense of every kind and nature, threatened, incurred, arising out of or relating to the inquiry, investigation or recall, except to the extent such defect of the Products was solely caused by Microcom's sole negligence.
 - C. **On-Premises.** To the extent that Supplier's employees, associates, consultants, agents or other representatives ("Supplier's Agents") are present on or about the premises of Microcom, Supplier shall be responsible for their acts and omissions and shall indemnify and hold Microcom harmless from liability for any claims or damages to property or injuries or death to persons arising out of their acts or omissions, including without limitation: (1) the failure of Supplier's Agents to comply with applicable rules governing security, maintenance and safety at Microcom's premises; (2) any claim against Microcom by Supplier's Agents for injury or otherwise; or (3) any claim against Microcom resulting from Supplier's failure to maintain workers' compensation or other public or private insurance with respect to any of Supplier's Agents. In furtherance of the foregoing, Supplier hereby expressly waives any and all statutory and/or constitutional immunity to which, but for this waiver, it might be entitled as an employer in compliance with the State of Ohio's workers' compensation laws, or under any other employee benefit statute or similar laws of any jurisdiction.
 - D. The provisions of this Section shall survive the performance of the Order. Further, the indemnities of this Section shall not apply to the extent any such claim, loss, etc. is the result of Supplier's manufacture of the Products strictly in compliance with Microcom's Specifications or Microcom's sole negligence.

11. Cancellation of Orders

Microcom may at any time cancel an Order in whole or in part by notice to Supplier, whereupon Supplier shall terminate work pursuant to the terms of such notice and without any further liability of Microcom accruing thereafter, except as specifically permitted below:

- A. **Specialized Products.** If Products ordered are made specifically for Microcom and cannot be sold to other purchasers, upon cancellation by Microcom, Supplier shall promptly advise Microcom of the quantities of applicable work and material on hand, or purchased prior to cancellation and the most favorable disposition that Supplier can make thereof. Supplier will comply with Microcom's instructions regarding disposition of such work and material. All claims by Supplier based on such cancellation must be asserted within thirty (30) days from the date of the cancellation notice for the amount of the Order price of finished work, and the cost to Supplier, excluding profit or losses, of work in process and raw material, less, however (1) the agreed value of any items used or sold by Supplier with Microcom's consent, and (2) the reasonable value or cost (whichever is higher) of any defective, damaged or destroyed work or material, and any items sold or used by Supplier without Microcom's consent. Microcom will make no payments for finished work, work in process or raw materials fabricated or procured by Supplier unnecessarily in advance or in excess of Microcom's delivery requirements. The payment provided for in this clause shall constitute Microcom's only liability in the event an Order is cancelled as provided herein.
- B. **Standard Products.** If Products ordered are normally carried in inventory by Supplier (as distinguished from items described in subsection (A) above), Microcom shall not have liability for any cancellation of the Order, in whole or in part, prior to actual shipment and within ten (10) days after receipt of Products by Microcom, except that in such latter situation Microcom shall return such Products to Supplier at Microcom's expense.
- Notwithstanding the above, in the event Supplier breaches any term of the Order or fails to demonstrate to Microcom its progress in fulfilling an Order so as to cause Microcom reasonable concern regarding the timely and proper completion or delivery of the Products, Microcom may cancel the Order without further liability to Supplier, and the provision of subsections (A) and (B) above shall not apply.

12. Insurance

Supplier will maintain insurance, in amounts customary in Supplier's industry, with reputable and financially responsible insurance companies reasonably acceptable to Microcom, insuring against all public liability, including injury and death to persons, products' liability and damage to property, arising out of or related to the Products or Supplier's performance under an Order, and shall furnish Microcom,

upon request, certificates of such insurance authenticated by the issuing company. Except as otherwise agreed by Microcom, Supplier will insure all shipments of Products for full value. Upon request by Microcom, Supplier shall have Microcom listed as a named insured on the insurance policies required under this Section. Supplier will also maintain workers' compensation insurance covering all employees and will provide certification of such insurance if requested by Microcom, however Microcom's failure to so request shall not be a waiver of this requirement.

13. Force Majeure

Any event or occurrence beyond the reasonable control of Microcom without its fault or negligence such as, by way of example and not of limitation, fire, flood, earthquake or other acts of God, epidemic, strike, war, civil commotion or governmental regulation, shall allow Microcom the option of canceling all or any part of an Order without liability for any damages resulting from such cancellation.

14. Miscellaneous

- A. **Publicity.** Without Microcom's prior written consent, Supplier shall not advertise or publish in any manner that Supplier has contracted to, or has furnished Products to Microcom.
- B. **Assignment.** All covenants and agreements contained in an Order by or on behalf of any of the parties thereto shall bind and inure to the benefit of their respective successors and assigns, except that Supplier shall have no right to assign its rights or obligations under an Order or any interest therein without the prior written consent of Microcom.
- C. **Amendment.** No consent, amendment, modification, termination or waiver of any provision of an Order shall be effective unless in writing and signed by both parties, and then only in the specific instance given.
- D. **Titles and Headings.** The titles and headings of the various sections hereof are solely for convenience and are not part of an Order for purposes of interpreting the provisions hereof.
- E. **Applicable Law.** The Order is being executed and delivered in and is intended to be performed under the laws of the State of Ohio. If any provision hereof is or becomes invalid or unenforceable under any law of mandatory application, it is the intent of the parties to the Order that such provision will be deemed severed and omitted therefrom, the remaining portions hereof to remain in full force and effect as written.
- F. **Setoff/Recoupment.** In addition to any right of setoff or recoupment provided by law, Microcom may setoff against, or recoup from, any amounts owing to Supplier, any amounts owing to it by Supplier, including, without limitation, damages (including reasonable attorneys' and professional fees and costs) resulting from breaches by Supplier of its obligations to Microcom under any Order.