



GeoSync Microwave, Inc  
320 Oser Avenue  
Hauppauge, NY 11788  
www.geosyncmicrowave.com

## TERMS AND CONDITIONS OF SALE

### 1. TERMS OF SALE

These standard terms and conditions ("Terms") govern all sales of products (collectively, the "Products") by GeoSync Microwave Inc. ("GeoSync") to Buyer regardless of whether Buyer purchases the Products through the medium of written purchase orders, electronic orders, verbal or written quotations, or any other writings or communications from GeoSync and/or Buyer relating to the Products (collectively, the "Purchase Orders"). Upon GeoSync's express acceptance by its issuance of a written Sales Order Acknowledgement ("SOA") or upon commencement of performance by GeoSync, these Terms and the Purchase Orders become a binding contract between Buyer and GeoSync (the "Sales Agreement"). In case of any conflict between these Terms and the terms of a Purchase Order, these Terms prevail except where GeoSync has expressly accepted the conflicting term from the Purchase Order in its SOA. Absent such express written acceptance, any such conflicting or additional terms proposed by Buyer are expressly rejected by GeoSync. Except as otherwise set forth in these Terms, GeoSync must specifically agree to any addition or change to the Sales Agreement in a non-electronic writing signed by a duly authorized representative of GeoSync before becoming binding on GeoSync.

### 2. PRICE

In addition to the price of the Products as set forth in the Sales Agreement, Buyer agrees to pay to GeoSync sales, use, excise, or similar taxes applicable to the sale of the Products and such other costs and expenses described in these Terms.

### 3. PAYMENT

Buyer must make payment to GeoSync in the currency stated on the invoice within thirty (30) days of Buyer's receipt of the Products or the date of the invoice for the Products, whichever is sooner. Payments not received by GeoSync when due may, at GeoSync's sole discretion, bear interest at the lower of twelve percent (12%) per annum or the maximum rate allowed by applicable law. GeoSync reserves the right to limit or cancel the credit of Buyer, and GeoSync may require or demand advance payment and/or adequate assurances of performance from Buyer prior to taking any preparatory steps for performing under the Sales Agreement or beginning the manufacture of the Products. GeoSync will not schedule Products for manufacture with payment terms of "Cash in Advance" until paid in full by Buyer. GeoSync may impose order limits on Buyer if payment terms are "Cash on Delivery." If Buyer becomes the subject of a bankruptcy or other insolvency proceeding, or fails to pay GeoSync's invoices as they become due, GeoSync reserves the right to: (a) delay or cancel any Sales Agreement then outstanding and receive full reimbursement for its cancellation damages pursuant to Paragraph 12 below; (b) modify terms prior to shipment; (c) require "Cash in Advance" terms; or (d) delay or cancel any shipment.

### 4. SPECIFICATIONS

Unless otherwise agreed to in writing between GeoSync and Buyer, GeoSync will manufacture all of the Products in accordance with its own specifications ("Standard Specifications").



GeoSync Microwave, Inc  
320 Oser Avenue  
Hauppauge, NY 11788  
www.geosyncmicrowave.com

Any notice or instruction from Buyer received subsequent to Seller's acknowledgement which has the effect of changing the specifications, scope of work, or other terms will be effective only upon an appropriate adjustment in the price and/or delivery date, and the written acceptance of any such change by the seller.

## **5. PACKAGING**

Product will be packaged according to GeoSync standard packaging criteria.

## **6. DELIVERY**

GeoSync will deliver the Products FOB GeoSync's facility. Buyer must pay all transportation costs of the Products. GeoSync may make partial shipments at GeoSync's sole discretion. If Buyer refuses to accept tender or delivery of any of the Products, such Products will be held by GeoSync awaiting Buyer's instruction for twenty (20) days, after which GeoSync may deem the Products abandoned and dispose of them as it sees fit, without crediting Buyer's account. A delivery date indicated in a SOA is not binding on GeoSync. A delivery date indicated in a SOA by GeoSync is estimated but is not guaranteed. GeoSync will endeavor to meet the delivery date specified by Buyer. If GeoSync is unable to meet that date, Buyer has no claim for damages resulting from any such delay in delivery. Buyer acknowledges that notwithstanding the foregoing, the following events may cause GeoSync's failure to perform any of GeoSync's obligations under the Sales Agreement (collectively, the events are "Delaying Events" and each event is a "Delaying Event"): (a) any cause beyond GeoSync's reasonable control, including, but not limited to, a labor dispute, industry disturbance, fires, unusually severe weather conditions, earthquakes, floods, declared or undeclared war, epidemics, computer malfunctions, civil unrest, riots, lack of supplies, delay in transportation, governmental, regulatory or legal action, act of God; or (b) by acts or omissions of Buyer, including, but not limited to, Buyer's failure to promptly comply with the terms of payment under the Sales Agreement. Any date of delivery may be extended for a period equal to the time lost by reason of any Delaying Event. GeoSync reserves the right to cancel without liability any Sales Agreement, the shipment of which is or may be delayed for more than thirty (30) days by reason of any Delaying Event. GeoSync reserves the right to allocate in its sole discretion among customers or potential customers, or defer or delay the shipment of, any of the Products, which is in short supply.

## **7. TITLE AND RISK OF LOSS**

Title to the Products and all risk of loss to the Products pass to Buyer upon the FOB delivery of the Products by GeoSync. Buyer must obtain adequate insurance to cover the Products from the time risk of loss has passed from GeoSync. Any special tools, dies or fixtures which are used by GeoSync to develop or manufacture any of the Products shall become and remain GeoSync's property.

## **8. LIMITED WARRANTY**

Notwithstanding any other provision hereof, Seller's sole and exclusive obligations and Buyer's sole and exclusive remedy for the products sold hereunder are set forth in the Seller's warranty which is attached hereto and made a part hereof.



GeoSync Microwave, Inc  
320 Oser Avenue  
Hauppauge, NY 11788  
www.geosyncmicrowave.com

## **9. LIABILITY LIMITATION**

IN NO EVENT IS GEOSYNC RESPONSIBLE TO BUYER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ALL DIRECT AND INDIRECT LOSSES (INCLUDING LOST PROFITS AND ANY OTHER FORM OF ECONOMIC LOSS) REGARDLESS OF WHETHER THOSE DAMAGES WERE FORESEEABLE. THE LIABILITY OF GEOSYNC ARISING OUT OF OR RELATING TO THE PRODUCTS SHALL BE LIMITED TO THE ACTUAL AMOUNTS PAID BY BUYER TO GEOSYNC FOR THE PRODUCTS GIVING RISE TO SUCH DAMAGES. GeoSync will not be liable for any inaccuracies of information published by GeoSync relating to the Products.

## **10. TERMINATION / CANCELLATION**

In the event of a breach by Buyer, GeoSync may terminate the Sales Agreement upon giving ten (10) day's written notice of termination. If the Sales Agreement is terminated by GeoSync because of Buyer's breach, GeoSync is entitled to reasonable reimbursement for any labor, material or other expenses incurred in connection with the Sales Agreement, plus a reasonable amount for overhead. All cancellations and reschedules by Buyer require a minimum of: fourteen (14) days prior written notice for standard Products; thirty (30) days prior written notice for customized Products; and sixty (60) day's prior written notice for all other Products, unless otherwise agreed to in writing by GeoSync. GeoSync will ship all completed Products scheduled for delivery during such periods unless an exception is negotiated and agreed to in writing by both parties. In the event of any cancellation of a Sales Agreement, Buyer shall pay GeoSync: (a) the price for any Products manufactured to firm orders; (b) the cost of any work in process; (c) the cost of materials and components ordered with authorization to meet forecast; and (d) a reasonable mark-up on the cost of work in process and the ordered materials and components. If Buyer requires GeoSync to cancel any authorized orders for materials or components, Buyer shall be responsible for any cancellation costs or restocking charges incurred as a result.

## **11. INDEMNIFICATION**

To the maximum extent allowed by law, Buyer must defend and indemnify GeoSync and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that GeoSync may incur or be obligated to pay as a result of: (a) Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of the Products; (b) any infringements or alleged infringement of the industrial and intellectual property rights of others arising from Non-Standard Specifications (including Buyer's trademarks and brand names) or production of configurable Products and/or custom Products ordered by Buyer; (c) Buyer's violation or alleged violation of any Federal, state, county or local laws or regulation, including without limitation, the laws and regulations governing product safety, labeling, packaging and labor practices; or (d) Buyer's breach of the Sales Agreement.

## **12. ITAR / GOVERNMENT USE**

Certain of the Products may be categorized as Defense Articles by the U.S. Department of State and are subject to the International Traffic in Arms Regulations. If Buyer's Purchase Order is placed under a contract with the United States Government (the "Government"), GeoSync agrees to comply with those contract provisions and regulations with which, pursuant to law, it must comply and of which Buyer has, at the time of order placement, placed GeoSync on notice. In no



GeoSync Microwave, Inc  
320 Oser Avenue  
Hauppauge, NY 11788  
www.geosyncmicrowave.com

event will United States Government Cost Accounting Standards apply. All rights in technical data owned or licensed by GeoSync are hereby reserved and deemed restricted or limited. No provision of Buyer's contract with the Government will be binding on GeoSync except as expressly set forth in this paragraph.

### **13. ENTIRE AGREEMENT**

The Sales Agreement comprises the complete and final agreement between GeoSync and Buyer, except as specifically set forth in Paragraph 1, and supercedes all prior negotiations, proposals, representations, commitments, understandings or agreements between GeoSync and Buyer, either written or oral. Any other representations or warranties made by any person, including employees or other agents of GeoSync, that are inconsistent with the Sales Agreement must be disregarded by Buyer and are not binding upon GeoSync. If any model or sample were shown to Buyer, such model or sample was used merely to illustrate the general type and quality of goods and not to represent that the Products would necessarily conform to the model or sample.

### **14. SUCCESSORS AND ASSIGNS**

The Sales Agreement binds and inures to the benefit of Buyer and GeoSync and their respective successors and permitted assigns. The Buyer may not assign any interest in, nor delegate any obligation under the Sales Agreement, without GeoSync's prior written consent.

### **15. GOVERNING LAW**

The validity, construction and performance of the Sales Agreement is governed by, and must be construed in accordance with, the laws of the State of New York, without regard to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sales of Goods does not apply to the Sales Agreement and all of the terms of the Sales Agreement must be construed in accordance with the Uniform Commercial Code as enacted in the State of New York.

### **16. EXPORT CONTROLS**

With respect to the resale, export or any other disposition of the Products or technical information furnished hereunder, Buyer will comply fully with all export control laws and regulations of the Government. Buyer agrees not to export or re-export either directly or indirectly, any technical data furnished hereunder or the direct product of such technical data to any country which, as set forth in the Export Administration Regulations of the United States Department of Commerce, is prohibited.

### **17. DISPUTE RESOLUTION**

GeoSync reserves the right to invoke the jurisdiction of any competent court to remedy or prevent violation of any provision of the Sales Agreement or to otherwise protect its interest. Any dispute with Buyer in connection with the Sales Agreement may, at GeoSync's sole discretion, be resolved through binding arbitration in the State of New York, pursuant to the commercial arbitration rules of the American Arbitration Association ("Arbitration"). GeoSync, may, in its sole discretion, elect to have a judicial forum for dispute resolution. Buyer's only forum for dispute resolution is Arbitration. The Arbitration proceedings must be conducted in the English language



GeoSync Microwave, Inc  
320 Oser Avenue  
Hauppauge, NY 11788  
www.geosyncmicrowave.com

and all submissions must be made in English or with an English translation. Witnesses may provide testimony in a language other than English if simultaneous English translation is provided. The results of Arbitration will be final and non-appealable.

#### **18. JURISDICTION AND VENUE**

Buyer irrevocably submits and agrees to the jurisdiction of the state courts of the State of New York and the Federal courts within the State of New York, in any action, suit or proceeding related to, or in connection with, the Sales Agreement. To the extent permitted by applicable law, Buyer waives and agrees not to assert as a defense in any such action, suit or proceeding any claim: (a) that Buyer is not personally subject to the jurisdiction of the state courts of the State of New York and/or the Federal courts within the State of New York; (b) that the venue of the action, suit or proceeding is improper; (c) that the action, suit or proceeding is brought in an inconvenient forum; or (d) that the subject matter of the Sales Agreement may not be enforced in or by the State and or Federal courts of the State of New York. Without prejudice to any other mode of service, Buyer consents to service of process relating to any such proceedings by personal or prepaid mailing (air mail if international) in registered or certified form a copy of the process documents to the Buyer's address.

#### **19. WAIVER**

The waiver by GeoSync of any breach by Buyer of any provision of the Sales Agreement may not be construed to be either a waiver of the provision itself as to subsequent application or any other provision of the Sales Agreement.

#### **20. SEVERABILITY**

If any provision of the Sales Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Sales Agreement remain in full force and effect.

#### **21. NOTICES**

No notice or other communication under the Sales Agreement is sufficient to affect any rights, remedies or obligations of either party unless the notice or communication is in writing and (as elected by the party giving the notice) is: (a) personally delivered; (b) transmitted by facsimile (with a receipt acknowledgment); (c) transmitted by electronic computer mail; (d) transmitted by a recognized courier service; or (e) mailed (air mail if international) in registered or certified form, to the party to which notice or communication is being given at the following address:

If to GeoSync, at the address on the SOA

If to Buyer, at its last address designated on the Purchase Orders.

Except as otherwise specified in the Sales Agreement, all notices or communications are deemed to have been duly given: (a) on the date of receipt if delivered personally; (b) on the date of transmission if delivered by facsimile or electronic computer mail; (c) one day after pickup by courier if delivered by courier; or (d) five days after mailing if delivered by the postal service. Either party may change its address by notice to the other party.



GeoSync Microwave, Inc  
320 Oser Avenue  
Hauppauge, NY 11788  
[www.geosyncmicrowave.com](http://www.geosyncmicrowave.com)

## **22. CONSTRUCTION**

The headings of the paragraphs in these Terms are provided for convenience only and may not be considered in the interpretation of the Sales Agreement. The parties agree that the provisions of the Sales Agreement may not be construed in favor of or against either party by reason of the extent to which a party or its professional advisors participated in the preparation of the Sales Agreement.

## **23. SURVIVAL**

The terms of the Sales Agreement that by their nature are reasonably intended by the parties to survive its expiration or earlier termination, survive the expiration or termination of the Sales Agreement.