



## Standard Terms & Conditions of Sale for Solid State RF Microwave Energy

### 1. Definitions.

**"Seller"** means Crescend Technologies LLC (Crescend" or "Seller") or subsidiary specified in the Contract, Purchase Order, or Order as the supplier of the Goods and/or Services.

**"Purchaser"** means the person, firm or company specified in the Contract, Purchase Order, or Order to be supplied with the Goods and/or Services by the Seller.

**"Contract," "Purchase Order," or "Order"** means the document bearing a unique reference number detailing the Goods and/or Services to be supplied, the price thereof and other relevant details of the agreement for sale and purchase to which these Terms and Conditions apply.

**"Goods"** means the equipment, materials and/or other items to be supplied pursuant to the relevant Contract, Purchase Order, or Order.

**"Services"** means the installation, testing, engineering, or other agreed technical assistance to be supplied pursuant to the relevant Contract, Purchase Order, or Order.

**"EXW"** stands for Ex Works, an incoterm whereby the Purchaser of a shipped product pays for the goods when they are delivered to a specific location.

### 2. General.

The sale by Crescend of any Goods, products or services to Purchaser shall be subject to the following terms and conditions, and the terms and conditions, which take precedence over all other documents, including purchase orders, unless the purchase order specifically references these terms and conditions and that the purchase order varies from them. Crescend objects to, and is not bound by, any terms and conditions stated in Purchaser's acceptance unless accepted in writing by Crescend. These Terms and Conditions are in lieu of and replace all terms and conditions set forth in any purchase order or other documents issued by the Purchaser. Any additional, different, or conflicting terms and conditions on any such document issued by Purchaser at any time are hereby objected to and rejected by Crescend, shall be wholly inapplicable to any sale made by Crescend and shall not be binding in any way on Crescend. No modification, waiver or amendment to these Terms and Conditions shall be binding on Crescend unless made in a writing expressly stating that it is such a waiver or amendment and signed by Crescend. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by Crescend.

### 3. Acceptance and Complete Contract.

- a. Unless specifically agreed in writing to the contrary, these Terms and Conditions together with specifications, drawings and other documents incorporated in writing and agreed to by both parties shall constitute the entire agreement and contract between the Seller and the Purchaser in respect of the purchase and sale of the specified Goods and/or Services. These Terms and Conditions shall supersede and take precedence over any other terms or conditions as may be shown or referred to in any other correspondence or implied by trade custom practice or course of dealing and any such prior representations or understandings and any such purported provisions to the contrary are hereby expressly excluded.
- b. No modification, waiver or amendment to these Terms and Conditions shall be binding on unless made in writing expressly stating that it is such a waiver or amendment and signed by a Crescend Technologies LLC representative.



## Standard Terms & Conditions of Sale for Solid State RF Microwave Energy

- c. Each order is subject to acceptance by Seller. No order shall be deemed a contract until and unless Seller's representative makes acceptance in writing. The Seller will accept the Contract at its office in Glendale Heights, IL, USA, and the Contract is deemed to have been entered into regardless of the residence of the Purchaser or destination of the products or services contracted for herein.
- d. Any special provisions must be set out in the Contract, Purchase Order, or Order and agreed to in writing by the Purchaser and Seller.

### 4. Quotations

- a. Unless otherwise specified herein, prices quoted are valid for 30 days from the date of quotation. A quotation by the Seller does not constitute a Contract and the Seller reserves the right to withdraw or amend the same at any time prior to the Seller's acceptance of the relevant Contract, Purchase Order, or Order. In addition, pricing can change prior to acceptance, or pursuant to Paragraph 5, below, as a result of changes in the costs of materials, components and/or commodities.
- b. Generator and System sale prices are quoted delivery of Goods EXW Seller, Glendale Heights, IL, U.S.A., in U.S. dollars.

### 5. Pricing

- a. Unit prices apply only to the specific quantities and delivery schedule shown. Any variation in quantity, specifications and/or date of delivery may necessitate a revision to the unit price.
- b. Seller reserves the right to revise and announce new prices for any Goods and/or Services. Quoted prices will be honored if an order is received prior to the expiration of a valid quotation in accordance with Article 3 above outstanding at the time of the price change and the Order will be completed and shipped as agreed upon by the parties. Subsequent orders for the same equipment are subject to the revised or newly announced prices. Seller reserves the right to revise and announce new prices for any Goods and/or Services. Pricing of all products does not account for manufacturers or distributors imposing price increases to Seller after Buyer's placement of purchase orders, as well as the increase in costs of any commodities materials or other components. Any increases in such costs imposed upon Seller after Seller accepts a Purchase Order from Buyer shall be passed on to and covered by Buyer.
- c. Unless otherwise specified, sales prices are exclusive of all sales, use and other taxes, duties, or charges, domestic or foreign. Purchaser shall pay or upon receipt of invoice from Seller, shall reimburse Seller for all such taxes, duties, or charges levied or imposed on Purchaser or required to be collected by Seller resulting from this transaction or any part thereof.
- d. Unless otherwise specified, sales price excludes freight, shipping, and handling charges. Separate charges for freight, shipping and handling will be shown on Seller's invoice(s). All claims for breakage, loss delay and damage must be made to the carrier.

### 6. Terms of Payment

- a. Unless otherwise agreed in the specific offer or order, the Purchaser shall make payment(s) according to the schedule stated in the Quotation. Purchase orders will not be accepted until prepayment conditions have been met, as noted in the quotation.
- b. All payments must be made in U.S. currency. If credit terms have been agreed by Seller, invoices are due and payable within thirty (30) days after the date of the invoice, unless otherwise noted on the purchase order or invoice.



## Standard Terms & Conditions of Sale for Solid State RF Microwave Energy

- c. The Purchaser agrees to pay interest on all past due amounts at the lesser of 1.5% per month, or the highest rate allowed by law.
- d. Payments made by Credit Card will be subject to a 3% surcharge.
- e. Each shipment shall be considered a separate and independent transaction and payment made accordingly. Seller reserves the right to ship its order and make collection by sight draft, with bill of lading attached.
- f. If the Purchaser delays manufacture, the order price shall be increased in the event Seller incurs, during the period of delay, any vendor or supplier price increases applicable to the goods under contract with Purchaser. Seller may at any time and from time to time, in its sole discretion, limit or cancel the credit of the Purchaser as to time and amount and, as a consequence, may demand payment in cash before delivery of any unfulfilled portion of this Contract, and failure of the Purchaser to make any such payment within 10 days after demand shall constitute default under the Contract. Approval of credit for one or more deliveries or orders shall not be deemed a waiver of the provisions of this paragraph. Purchaser hereby represents to Seller that it is now solvent and agrees that each acceptance of delivery of the products sold hereunder shall constitute reaffirmation of this representation.
- g. If, in the judgment of Seller, the financial condition of Purchaser at any time does not justify continuance of production or shipment on the terms of payment originally specified, Seller might upon a ten (10) day notice, require full or partial payment in advance, regardless of the payment terms originally specified. In the event of bankruptcy or insolvency of Purchaser, Seller may cancel any order then outstanding and receive reimbursement for its cancellation or termination liability charges.
- h. Purchaser agrees to pay legal fees incurred by Seller to collect any unpaid balance due or to otherwise enforce the rights of Seller hereunder by legal proceedings or otherwise.

### 7. Design Changes (System Sales Only)

The final system layout, including specifications and drawings, relating to installation of the equipment shall be mutually developed and agreed upon in writing by Seller and Purchaser. Once the final system layout has been approved in writing by Purchaser for fabrication, subsequent modifications to the system layout or the equipment shall be subject to additional charges to be mutually agreed upon by the parties and paid for by Purchaser.

### 8. Inspection (Generator Sales Only)

Unless otherwise agreed in writing, the Goods are subject to Seller's standard inspection and/or testing at place of manufacture. Purchaser may inspect the Goods and/or witness testing at the place of manufacture or at such other place as Seller, in its sole discretion, shall designate, and Purchaser's consequent approval or rejection of the Goods must be made prior to shipment. Purchaser's failure to inspect will constitute acceptance. Where Purchaser has inspected the Goods prior to shipment, Purchaser shall have no right whatsoever to inspect, reject or revoke its acceptance of the Goods after shipment. Purchaser is responsible for any charges associated with witnessed testing beyond the normal level of activity for routine test activities, as defined on the Contract, Purchase Order, or Order.

### 9. Delivery

- a. Delivery time quoted is Seller's best estimate and is not a commitment or guarantee by Seller as to shipment or delivery on specific dates and shall begin once the Purchaser has approved the final configuration and acceptance of the Contract. Seller shall not be liable for any delay in performance or inability to perform occasioned by any Force Majeure conditions beyond its control or beyond the control of its suppliers or subcontractor.
- b. Unless otherwise specifically provided, delivery of Goods shall be made EXW Seller, Glendale Heights, IL, USA, at which the title and risk of loss shall pass to the Purchaser, notwithstanding the fact that the Seller may have selected the Carrier, upon delivery to the carrier at the Seller facility. Common carrier shipping will be prepaid and



## Standard Terms & Conditions of Sale for Solid State RF Microwave Energy

added to Purchaser's invoice.

- c. In any case where Goods are sold on the basis of any other international trade term, the meaning of such term contained in INCOTERMS (2000) shall apply as if expressly incorporated herein except insofar as any part of the same may be inconsistent with any of the provisions contained in these conditions.
- d. In the case that the Contract involves more than one delivery, and default is made in payment on the due date, the Seller shall have the right to suspend all or any further deliveries pending payment or to terminate the Contract in its entirety by notice in writing to the Purchaser.
- e. If Purchaser delays shipment, Seller may invoice, warranty commences, and payments are to be made as though shipment has been made as specified.
- f. In the event Purchaser delays shipment(s), Seller will also invoice Purchaser for handling and monthly storage fees at the current market rates. These charges will be added to the corresponding invoice and payment in full must be received prior to shipment.

### 10. Packaging and Shipping

- a. All Goods are carefully packed for shipment and Seller shall not be responsible for loss, delay, or breakage in shipment.
- b. Equipment for Domestic (CONUS) sites shall be shipped in standard commercial packaging for truck or air transport only. Export packing (sea container or air) will be quoted upon request. When special or export packaging is required or requested, the cost of the special packaging will be separately invoiced to Purchaser. Unless otherwise stated, the FOB or EXW (INCOTERMS 2000) point is Glendale Heights, IL, USA.
- c. Unless expressly prohibited by the Contract, partial shipments shall be accepted.
- d. Unless agreed in writing prior to shipment, Purchaser shall have sole control and discretion with respect to mode of transportation, routing and any other matters connected with, related to, or involved in transportation of the Goods, otherwise Seller may accept these responsibilities.
- e. Shipping dates specified herein or otherwise communicated to Purchaser are approximate only. Seller does not and shall not guarantee any shipping date unless such guarantee and the terms thereof are specifically agreed to in writing. Any such guarantee shall be strictly limited to the exact terms so stated.

### 11. Cancellation of an Order

- a. The Purchaser may cancel an order only upon written notice sixty (60) days prior to shipment, and upon payment to Seller of all reasonable cancellation and/or termination liability charges.
- b. In the event the Purchaser cancels an order for any reason prior to shipment of Goods, the Purchaser shall forfeit the down payment to the Seller.
- c. Orders for "Standard Product" canceled prior to shipment, are subject to a minimum 20% restocking charge, this includes items already in production or in finished goods inventory awaiting shipment to Purchaser.
- d. "Special" or "Custom" orders designed or modified to the Purchaser's specifications, which are canceled prior to shipment, are essentially non-cancelable for that portion in production or in finished goods inventory awaiting shipment to the Purchaser, and are subject to full recovery costs and profit or an agreed payment in accordance with a termination liability payment schedule, including any labor cost associated with design and production labor cost by third party supplier(s) that have been engaged by Seller to support the production of the system and equipment.
- e. Orders that are canceled after shipment to Purchaser, whether standard or special, remain the property of the



## Standard Terms & Conditions of Sale for Solid State RF Microwave Energy

Purchaser and subject to payment in full.

### 12. Delay and Force Majeure

- a. The Seller shall not be liable for delays in performance of its obligations and the date on which the Seller's obligations are to be fulfilled shall be extended for a period of time caused by the delay when the delay was due to causes beyond the Seller's control and not due to its fault or negligence, which Force Majeure causes include but are not limited to, the following:
  - i. Acts of God, unforeseeable circumstances, acts (including delay or failure to act) of any governmental authority (De Jure or De Facto), wars (declared or undeclared), riot, revolution, terrorism, hijacking, fires, strikes, labor stoppage, labor shortage, supply chain disruption, sabotage, epidemics, pandemics, government shutdown or related action, prohibition of import or export of goods or products, and interruptions of essential services and supplies such as electricity, natural gas, fuels and water.
  - ii. Inability due to causes beyond Seller's reasonable control to timely obtain from subcontractor necessary and proper materials, components, facilities, and, when the subcontractor has excusable causes as listed above and such items cannot reasonably be obtained from another source.
- b. Partial failure of performance due to any of the aforementioned causes shall not in itself terminate this Contract or excuse any failure by Seller to resume all obligations.
- c. In the event Seller is affected in the performance of its obligations by any of the aforementioned causes, it shall give the Purchaser prompt written notice of that fact together with satisfactory evidence substantiating that said cause prevents performance, as well as a declaration specifying the steps being taken by the Seller to remove such cause of nonperformance and to minimize its effects, and shall continue the performance of its other obligations under this Contract

### 13. Description and Data

- a. Goods and/or Services will be supplied substantially as described in Seller's applicable brochures and/or data sheets and where the Seller is the manufacturer, the right is reserved to make design changes which however will not lower the performance of the Goods or increase the price. Where the Seller is not the manufacturer, Goods and/or Services will be those supplied to the supplier/manufacturer's current specification and data sheets.
- b. The Seller shall make every effort to ensure the accuracy of technical data or literature relating to the Goods, but the Seller (so far as permitted by law) accepts no liability in contract, tort or otherwise for any damage or injury arising directly or indirectly or in consequence of any error or omission in such technical data or literature.
- c. It shall at all times be the Purchaser's responsibility to ensure that the Purchaser's specifications are correct and/or sufficient for the use intended by the Purchaser and the Purchaser must satisfy itself on this point.

### 14. Limited Warranty

- a. Seller warrants the items ordered hereunder at the time of shipment to be free from defects in material, workmanship, and to conform to the contract specification. Seller's liability under this Warranty shall terminate one (1) year from the date of delivery to the Purchaser. Extended warranties may be available subject to agreement on the cost and terms. **IN NO EVENT SHALL SELLER'S LIABILITY UNDER THIS WARRANTY EXCEED THE COST OF REPAIR OR REPLACEMENT OF SUCH DEFECTIVE ITEM AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES.**
- b. Any products, parts, services, and accessories not manufactured by Seller carry only the warranty that is provided by the manufacturer thereof, and such warranties, if any, may differ from the warranties offered by Seller. Seller will make its best efforts to facilitate warranty claims to third party suppliers.



## Standard Terms & Conditions of Sale for Solid State RF Microwave Energy

- c. **Disclaimer of Warranties.** Except as expressly provided in these terms and conditions, Seller makes no representation, statement of fact, promise, guarantee or warranty of any kind or nature, express or implied, and the foregoing limited warranties are in lieu of all other representations and warranties, express or implied, including any warranty of merchantability or of fitness for particular purpose, whether or not the purpose or use has been disclosed to Seller in specifications, drawings or otherwise, and whether or not Seller's products are specifically designed and/or manufactured by Seller for Purchaser's use or purpose. The Purchaser expressly waives any right, claim, or cause of action that might arise out of the purchase and use of any products or services supplied by or through Seller other than those rights expressly granted by express warranty. No employee or other representative of Seller, or any dealer or other person, firm or corporation is authorized to make any other representation, guarantee, or warranty on behalf of Seller, or to assume for Seller any other liability or obligation, express or implied.
- d. **Limited Warranty Remedy** - Seller sole liability and Purchaser's sole remedy under the foregoing General Equipment Limited Warranty is limited to the repair or replacement, at Seller sole discretion, without charge, and except for freight and/or round-trip travel and lodging expenses by a service technician from Seller's facility to the Purchaser's plant, of any part found to be defective under normal use and service within the warranty period specified for the particular part, provided that:
- i. Seller is promptly notified in writing upon discovery of such defect;
  - ii. Seller's examination discloses satisfaction that such defects have not been caused by misuse, abuse, neglect, accident, normal operational wear and tear, improper maintenance, or adjustments other than those specified in the Equipment's operating and maintenance manual;
  - iii. the equipment has been installed in accordance with Seller's installation instructions and operated in accordance with good engineering practice; and
  - iv. Items needing replacement are not of characteristically indeterminate life, such as bulbs, fuses, etc.
  - v. Unapproved modifications to the system may void the warranty and could result in safety hazards.
- e. **THIS WARRANTY CONSTITUTES SELLER'S SOLE AND EXCLUSIVE LIABILITY HEREUNDER AND PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR NONCONFORMING ITEMS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS IMPLIED OR STATUTORY (INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES ON THE PERFORMANCE OF THE SERVICES, OR THE PRODUCTS, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR COMMUNICATION WITH BUYER, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, TITLE OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT**

### 15. Sales Conveys No License

The Purchaser does not receive any right or license, express or implied, under any patents, copyrights, trade secrets, or the like of the Seller or its licensors under this Agreement except the limited rights to use the Goods provided under this Agreement.



## **Standard Terms & Conditions of Sale for Solid State RF Microwave Energy**

### **16. License and Consents**

If any license or consent of any government or other authority shall be required for the acquisition or use of the Goods by the Purchaser, the Purchaser shall obtain the same at its own expense and if necessary or so required shall produce evidence of the same to the Seller on demand.

### **17. Insurance**

Buyer shall maintain appropriate insurance to cover such party's respective risks and liabilities under this Agreement with coverage amounts commensurate with such risks and liabilities. This includes workers' compensation, automobile and general liability. Under no circumstances shall such insurance have a general liability coverage of less than \$5,000,000.

### **18. Limitation of Liability**

Seller's liability of any claim of any kind including negligence, for any loss or damage arising from, connected with, or resulting from this Contract, or from the performance or breach thereof, or from the design, manufacture, sale, delivery, installation, inspection, operation or use of any equipment covered by or furnished under this Contract, shall in no case exceed the purchase price of the Goods which gives rise to the claim.

IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, OR WARRANTY, OR NEGLIGENCE, OR OTHER ALLEGED ACTION, SHALL SELLER BE LIABLE FOR SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF USE TO THE EQUIPMENT OR AN ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWN-TIME COSTS, OR CLAIMS OF CUSTOMERS OF THE PURCHASER FOR SUCH DAMAGES.

### **19. Subcontracting**

The Seller reserves the right to sub-contract at its discretion any part of the work or the supply of any Goods and/or Services for which the Seller provides a quotation.

### **20. Termination**

The Seller may at its option terminate the Contract, the Purchase Order(s), or Order(s) placed upon the happening of one or more of the following events:

The Purchaser is in breach of any obligation to the Seller and such breach where capable of remedy be not remedied following the expiry of thirty (30) days from the date of notification from the Seller to the Purchaser specifying such breach; or

If the Purchaser becomes bankrupt (the filing of either a voluntary or involuntary proceeding); or if a receiving order is made against the Purchaser; or the Purchaser shall pass a resolution or enter into a Deed of Company Arrangement with its creditors (or an assignment for the benefit of creditors); or any court makes an order that the Purchaser shall be wound up; or if a receiver shall be appointed for any of the assets or undertaking of the Purchaser; or if circumstances shall arise which entitle the court to make a winding-up order; or if the Purchaser takes or suffers any similar action in consequence of debt.





## Standard Terms & Conditions of Sale for Solid State RF Microwave Energy

### 21. Waiver

The failure by either party to the Contract to exercise or enforce any rights conferred by the Contract shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

### 22. Notices

Any notice required or permitted to be given hereunder may be given by certified mail, overnight delivery, personal delivery, e-mail, or facsimile. Notice sent by certified mail shall be deemed to be served seventy-two (72) hours after placement into the airmails, postage prepaid to address. Notice given by e-mail or fax shall be deemed to have been received on the date, in normal course, it would be delivered. Until changed by written notice, given by either party to the other, the contact information of the parties shall be as specified in the applicable Contract, Purchase Order or Order.

### 23. Governing Law

This Contract shall be governed and construed in accordance with the laws of the State of Illinois without resort to its conflict of laws rules. If a court of competent jurisdiction determines one or more provisions of this Agreement illegal or invalid, that determination shall not affect the enforceability of the remaining provisions to the extent they can be given effect without the illegal or invalid provision. Any legal action will be brought in a court located within the County of DuPage, State of Illinois. Purchaser irrevocably consents to the jurisdiction of the courts of the State of Illinois for any and all disputes related to this Contract. The prevailing party to any litigation regarding this Agreement shall be entitled to recover from the other party the reasonable attorneys' fees and costs incurred in the litigation. The provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods are specifically excluded and shall not apply to this Agreement.

### 24. Security (Systems Sales Only)

If the Equipment is purchased on credit from Seller, Purchaser hereby grants Seller a purchase money security interest in the Equipment, and in all attachments, accessories, improvements, replacements, and proceeds, including insurance proceeds, resulting from any sale, assignment or other conveyance, or damage or destruction thereof (collectively, the "Collateral"), as security for the payment of all indebtedness of Purchaser to Seller. Purchaser hereby authorizes Seller, or its assignee, to sign and file financing statements in order to perfect the security interest of Seller hereunder. Seller shall have all the rights and remedies of a secured party under the Uniform Commercial Code which rights and remedies, to the extent permitted by law, shall be cumulative. Purchaser shall pay any expenses, including reasonable attorney's fees, incurred, or paid by Seller in the preservation or enforcement of Seller's rights under this Agreement. Prior to receipt of payment in full by Seller, Purchaser shall not create any other security interest in the equipment or suffer or permit any lien or attachment thereto or transfer its interest in the equipment without the prior written approval of Seller. For export orders, Seller may require, at its option, a Standby Letter of Credit to cover future payments due.

### 25. Equipment Installation; Site Requirements (System Sales Only)

Seller microwave processing systems require assembly, three phase electrical service, chilled water cooling, and in some applications, exhaust systems. The Purchaser is responsible for provision and installation of these systems in accordance with Seller specifications. The Purchaser is responsible for ensuring that these systems are installed by qualified personnel and conform to all relevant local codes and regulations. If requested, Seller personnel will provide technical support at the time of installation and during the system commissioning at the installation site. The Purchaser shall have completed all equipment mechanical assembly, plumbing, and wiring installation prior to the arrival of Seller's technician.

Seller's standard systems are designed to operate with a main electrical service of 480 volts at 60 Hz with a maximum +/- 5% voltage variation. Seller can supply systems that operate at different mains voltages. If this is required, the





## Standard Terms & Conditions of Sale for Solid State RF Microwave Energy

Purchaser must notify Seller prior to placing the order. It is the Purchaser's responsibility to resolve any power quality problems that affect the proper operation of the system.

The Purchaser will be billed at the rate of \$1,500 per day, plus travel and lodging expenses, for all on-site services. Seller shall exercise commercially reasonable efforts to provide timely installation assistance but shall not be responsible for any losses whatsoever for a delay in final installation or startup of the equipment.

### **26. Acceptance of Equipment (System Sales Only)**

When installation of the Equipment is certified as complete by Seller, and operates in good order in accordance with all material respects with the specification for the Equipment, Purchaser shall accept the Equipment in writing. Notwithstanding the foregoing, the Equipment shall be deemed accepted by the Purchaser as soon as the Equipment operates in good order in accordance, in all material respects, with the specifications for the equipment, or the Equipment is used or capable of being used in commercial production.

### **27. Fire Protection (System Sales Only)**

If flammable materials are to be processed by the system, it may be advisable for some Seller microwave oven systems to be connected to fire suppression equipment. It is the Purchaser's sole responsibility to make such a determination. Should fire suppression equipment be required by the Purchaser, such fire suppression equipment must be supplied by the Purchaser through a certified fire suppression equipment supplier. The Purchaser acknowledges that a fire protection system that meets NFPA (National Fire Suppression Association) requirements standard #12 is recommended by Seller. Seller strongly recommends the installation and certification of an approved fire protection system, directly attached to the Seller microwave oven equipment, prior to use of such equipment in production. Seller assumes no responsibility or liability whatsoever with respect to (a) any failure of Purchaser to use a fire suppression system with any Seller microwave oven system, or (b) the performance or nonperformance of any fire suppression system used by Purchaser with any Seller microwave oven system, whether or not such system was recommended by Seller.

### **28. Severability**

These Terms and Conditions shall be deemed severable. In the event that any provision is determined to be unenforceable or invalid, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law, and such determination shall not affect the validity and enforceability of any other remaining provisions.

### **29. Miscellaneous**

These Terms and Conditions, together with terms and conditions set forth on the face page of the purchase order/quotation or in Seller's invoices to Purchaser (a) contain the entire agreement between Seller and Purchaser relating to this sale, and expressly supersede and replace any prior or contemporaneous agreements, whether written or oral, relating to said sale, including any terms and conditions on any of Purchaser's documents or purchase orders, and (b) shall be binding upon and inure to the benefit of the heirs, successors and permitted assigns of the parties. The paragraph headings contained herein are for the convenience of reference only and shall not be construed so as to affect the interpretation or construction of any substantive provision hereof.