

## CONDITIONS OF SALE

Sale of the equipment or services described or referred to herein at the prices indicated is expressly conditioned upon the terms and conditions set forth below. Any confirmatory action by the Purchaser hereunder, or any acceptance of such equipment or services, shall constitute assent to said terms and conditions and a representation that the Purchaser is solvent. Any additional or different terms or conditions set forth in the Purchaser's order or other communications are objected to by Diamond Antenna and Microwave Corporation and shall not be effective or binding unless assented to in writing by an authorized officer of the Company.

### WARRANTY

The Company warrants to the Purchaser that the equipment to be delivered hereunder will be free from defects in material or workmanship and will be of the kind and quality designated or specified in the contract.

This warranty shall apply only to defects which are or could be discovered by testing or normal operations within one year from the date of shipment by the Company. The conditions of any tests shall be mutually agreed upon and the Company shall be notified of, and may be represented at, all tests that may be made.

If the equipment delivered hereunder does not meet the above warranty the Purchaser shall promptly notify the Company specifying the manner in which the equipment does not meet the warranty. Upon receipt of such notice, the Company shall correct only the defect, including nonconformance with the specifications, either (at its option) by repairing any defective or damaged parts of the equipment, or by making available at the Company's plant necessary repaired or replacement parts. The liability of the Company under this warranty or for any loss or damage to the equipment whether the claim is based on contract or negligence, shall not in any case exceed the cost of correcting defects in the equipment as herein provided and upon the expiration of the warranty period all such liability shall terminate. The foregoing shall constitute the sole and exclusive remedy of the Purchaser and the exclusive liability of the Company for damages of any kind. The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory (except as to title). **NO WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR PARTICULAR PURPOSE SHALL APPLY.** The Company does not warrant any equipment of other manufacture designated or specified by Purchaser.

### PATENTS

The Company shall defend any suit or proceeding brought against the Purchaser so far as based on a claim that any equipment, or any part thereof, furnished under this contract constitutes an infringement of any patent of the United States, if notified in writing and given authority, information and assistance (at the Company's expense) for the defense of same, and the Company shall pay all damages and costs awarded therein against the Purchaser. In case said equipment, or any part thereof, is in such suit held pursuant to a non appealable final judgment to constitute infringement and the use of said equipment or parts is enjoined, the Company shall, at its own expense and at its sole option, either procure for the Purchaser the right to continue using said equipment or part; or replace same with non-infringing equipment or remove said equipment and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of the law or in equity for patent infringement by said equipment or any part thereof.

The preceding paragraph shall not apply to any equipment or any part thereof, manufactured to Purchaser's design. As to such equipment or part, the Company shall have no liability whatsoever for patent infringement.

### TITLE, DELIVERY and ACCEPTANCE

The Company ships its products FOB shipping dock unless the Company otherwise agrees in writing. Shipping dates are approximate and are based upon prompt receipt of all necessary information. Title to the products and risk of damages pass to the Purchaser upon the products' departure from the company.

The Company shall not be liable for damages of any kind, delays in delivery or in performance or failure to manufacture or deliver, due to (1) causes beyond its reasonable control including inadvertent actions which cause an inability to meet specifications, or (2) acts of God, acts of the Purchaser, acts of civil or military authority, priorities, fires strikes or other labor disturbances, floods, epidemics, war, riot, delays in transportation or parts shortages, or (3) inability on account of causes beyond its reasonable control to obtain necessary labor, materials, components or manufacturing facilities. In the event of any such delay, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay.

The Purchaser shall notify the Company promptly of any defect or non conformity in the Company's products and, in any event, no later than thirty (30) days from the date of shipment by the Company. The Purchaser may not make a partial rejection of products shipped nor unilaterally reduce or alter the price or payments due for any shipment of products. If the Purchaser fails to give timely notice as required herein, or if the Purchaser uses the products within 30 days of shipment and before notification, the Purchaser shall have accepted the products without qualification and waived all claims and remedies it may have, including those provided under Article 2 of the Uniform Commercial Code

### PAYMENTS

Pro rata payments shall become due as shipments are made. If shipments are delayed by the Purchaser, payments shall become due on the date when the Company notifies the Purchaser that it is prepared to make shipment. The Company reserves the right to require payments from the Purchaser based on the purchase price and the percentage of completion. Equipment held for the Purchaser shall be at the risk and expense of the Purchaser. The Purchaser has

no right of setoff whatsoever, against payments owed to the Company nor any right to reduce or alter the amount of any payment owed. If the financial condition of the Purchaser at any time does not, in the sole judgment of the Company, justify continuance of the work to be performed by the Company hereunder on the terms of payment agreed upon, the Company may require full or partial payment in advance or shall be entitled to cancel any order then outstanding and shall receive complete reimbursement for its reasonable and proper cancellation charges. In the event of bankruptcy or insolvency of the Purchaser or in the event any proceeding is brought against the Purchaser, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, the company shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive complete reimbursement for its reasonable and proper cancellation charges. The rights of the Company under this paragraph are cumulative and in addition to all rights available to the Company at law or in equity.

### SALES AND SIMILAR TAXES

The Company's prices do not include sales, use, excise or similar taxes. The Purchaser shall pay any present or future sales, use, excise, or other similar tax applicable to the sale or use of the Company products or services. The Purchaser indemnifies the Company with respect to any such taxes as the Company is, becomes or may be required to pay or shall provide the Company with a tax-exemption certificate acceptable to the taxing authorities in lieu of such taxes.

### CANCELLATION OF ORDER

The Purchaser may cancel his order only upon written notice and upon payment to the Company of reasonable and proper cancellation charges. These charges will be based on the termination provisions of the Uniform Commercial Code (UCC).

### LIMITATION OF LIABILITY

The Company's liability on any claim of any kind, including negligence, for any loss or damage at law or in equity arising out of, connected with, or resulting from this contract, or from the performance or breach thereof, or from the inadvertent inability to meet specifications, manufacture, sale, delivery, resale, installation, technical direction of installation, inspection, repair, operation or use of any equipment covered by or furnished under this contract shall in no case, (except as provided in the paragraph entitled "Patents"), exceed the price allocable to the equipment or unit thereof which gives rise to the claim and shall terminate one year after the completion of installation of the equipment. Seller shall have no liability for any breach of warranty, express or implied, or for any breach of any contractual obligation hereunder unless written notice of same is given to Seller within thirty days after the date of the claimed breach. Any cause of action for any claim brought hereunder shall be commenced within one year from the date of the claimed breach.

**In no event, whether as a result of breach of contract or warranty or alleged negligence, shall the Company be liable for special, indirect, exemplary, punitive and / or consequential damages at law or in equity including, but not limited to, loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, or claims of customers of the Purchaser for such damages, or resulting in any way from use of equipment furnished or assembled by the Company.**

### GENERAL

The Company represents that any goods to be delivered hereunder will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.

Any assignment of any rights hereunder, by the Purchaser without written consent of the Company shall be unenforceable by the assignee. Contract is subject to the laws of Massachusetts.

The provisions of this contract are for the benefit of the parties thereto and not for any other person.

No understanding or promise, written or oral, and no waiver, alteration or modification of any provisions hereof, shall be binding upon the Company unless assented to in writing by an authorized representative of the Company.

The Company claims exclusive ownership and use of all intellectual property either disclosed or developed as a result of this contract.

The equipment sold hereunder was not designed or manufactured for use in or with any atomic installation or activity. If so used the Company disclaims all responsibility of every kind, including negligence, and in addition the Purchaser shall indemnify and hold the Company harmless for any liability or damage whether at law or in equity whatsoever arising out of the use of the equipment in such a manner.