

DOMESTIC TERMS AND CONDITIONS OF SALE OF COLEMAN MICROWAVE COMPANY ("Seller")

- 1. Shipment and Inspection.** Unless otherwise expressly agreed by Seller in writing, all goods shall be shipped FOB Seller's plant in Edinburg, Va. Risk of loss or damage to the goods shall pass to the Buyer for each shipment of goods by Seller when such goods are identified to the Buyer's order and ready for pick-up by Buyer's carrier. Buyer shall inspect the goods as soon as is reasonably possible after delivery and shall be deemed to have accepted the goods upon the soonest to occur of (a) actual processing or resale, or (b) the expiration of thirty (30) calendar days after Seller's delivery. Except for alleged defects identified by Buyer to Seller via written notice (describing with particularity any alleged defects in the goods) within five (5) calendar days after inspection of the goods by the Buyer (or the deadline for inspection if it occurs first) and "Latent Defects" as provided in **Section 3** herein), Buyer shall be deemed to have accepted all units of the goods "AS IS." If Buyer timely gives notice of defect, Seller at its option may inspect the goods itself or through an agent designated by it.
- 2. Payment.** The purchase price shall be paid, without offset, by Buyer in United States Dollars (a) upon Seller's acceptance of Buyer's order, or (b) within thirty (30) days after tender of delivery by Seller, if credit approval is expressly granted by Seller in its written order confirmation.
- 3. Limited Warranty.** Seller warrants to the Buyer that the goods supplied by Seller shall conform to the description set forth in Seller's invoice to Buyer and Seller's written product specification for the products as of the date of Seller's written quotation to Buyer, or the written order confirmation issued by Seller to Buyer if no written quotation was issued by Seller, and that the goods will be free from "Latent Defects" (as defined below) in material and workmanship for a period of one (1) year from the date of delivery to the Buyer. **SELLER HEREBY DISCLAIMS AND DENIES ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTIES EXPRESSED OR IMPLIED BY LAW.** Seller's warranties shall be null and void if the goods are not handled, operated and maintained in accordance with Seller's instructions or upon any misuse of the products or defect or damage caused by anyone other than Seller, or in the case of defects which were actually discovered by Buyer or should have been discovered by Buyer prior to processing. If Buyer asserts a warranty claim which is later determined by Seller to be unfounded or outside of the notice period of **Section 3** herein, Buyer shall within thirty (30) calendar days of invoicing by Seller pay Seller for all travel expenses and other costs and expenses incurred or expended by Seller in regard to the unfounded warranty claim. A "Latent Defect" under this **Section** is a defect (a) that was not discovered by Buyer during the inspection period provided in **Section 3** herein and was also not discovered before it was processed by Buyer, and (b) which is of a type which could not be discovered through a commercially reasonable and thorough inspection by Buyer or any more rigorous inspection that should have been performed by Buyer under its established procedures or frequent customs.
- 4. Limited Remedy.** **THE SOLE AND EXCLUSIVE REMEDY FOR ANY GOODS WHICH FAIL TO CONFORM TO ANY WARRANTY BY SELLER SHALL BE FOR THE SELLER, AT ITS OPTION, TO EITHER (A) REDUCE THE PURCHASE PRICE TO REFLECT THE DIFFERENCE IN VALUE (BASED UPON THE PURCHASE PRICE TO THE BUYER HEREUNDER) OF THE DEFECTIVE UNITS AS DELIVERED FROM THE VALUE OF THE PRODUCTS AS WARRANTED, OR (B) TO REPAIR OR REPLACE THE DEFECTIVE PRODUCTS. SPECIFICALLY AND WITHOUT LIMITING THE FOREGOING, SELLER SHALL IN NO EVENT BE LIABLE FOR INJURY TO PERSON OR PROPERTY, BUYER'S LOST PROFITS OR OTHER INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER.** Defective units shall be handled by Buyer in a commercially reasonable manner so as to maximize their value to Seller and Buyer and to minimize the loss and expense of the respective parties.
- 5. Notices.** Notices required or permitted to be given to Seller under this instrument or in regard to the goods shall be deemed effective when actually received by the Seller in writing addressed as follows: URGENT--DATED MATERIALS--OPEN AT ONCE, Coleman Microwave Co., 109 Molineu Road, Edinburg, Virginia 22824, Attn: General Manager. Notices to Seller shall be effective only if sent by (a) e-mail or fax to Seller, provided that by the next calendar day a confirming copy of the notice is also dispatched in the manner set forth in clause (b) of this Section, or (b) by an independent delivery service by which (i) delivery is guaranteed within one (1) day, and (ii) a record of delivery is made.
- 6. Force majeure.** Notwithstanding any term herein to the contrary, Seller shall be entitled to an equitable extension in its delivery deadline or to cancel its obligations hereunder if Seller's performance becomes commercially impracticable or if Seller is hindered or delayed by any circumstances or occurrences beyond the control of Seller or any of its suppliers, whether or not foreseeable, including but not limited to, acts of God, strikes or other labor disruptions or problems, action or failure to act by any government, shortages of raw materials or other components, damage by fire or the elements, or inclement weather.
- 7. Miscellaneous.** Seller may deliver the goods in separate lots, and a nonconforming delivery cannot be rejected unless the nonconformities substantially impair the value of that entire installment and cannot be cured by the Seller. If the Seller gives adequate assurances of cure, the Buyer must accept that installment. The Buyer may not cancel its order, in whole or in part, where the nonconformity does not impair the value of the contract as a whole, nonconforming installments are accepted, or when performance of future installments is demanded.

Buyer shall not sell or otherwise transfer the goods acquired from Seller to any person or destination to which Seller would be prohibited from doing so directly under the export laws of the United States or other applicable law or take any other action with respect to the goods which would require an export license if performed by Seller.

For causes of action in respect to goods ordered by Buyer from Seller, the parties irrevocably consent to the jurisdiction and venue of the Circuit Court for Shenandoah County, Virginia and the United States District Court for the Western District of Virginia upon service of process made in accordance with the statutes of the Commonwealth of Virginia and the United States. The parties further agree that the appropriate jurisdiction and venue for any and all causes of action by, between or among the Buyer and Seller shall be only in either of those courts, except that Seller may institute collection proceedings in any forum. The parties expressly and irrevocably assent and submit to the personal jurisdiction of such courts in any such action or proceeding between the parties and expressly and irrevocably waive any claim or defense in any such action or proceeding based on any alleged lack of personal jurisdiction, improper venue or forum non conveniens.

This document and Seller's submitted invoice to Buyer represent the entire understanding and agreement of the parties and may not be amended or supplemented except in a writing manually signed by an officer of Seller for that express purpose (collectively, "Contract Documents"). Any different or additional terms proposed by Buyer (whether through a purchase order, confirming memorandum or otherwise) shall be treated as an offer to add such terms which may be accepted or rejected at the option of the Seller. Notwithstanding Virginia UCC § 8.2-201 or its counterpart in any other jurisdiction, the said offer by Buyer shall be deemed to have been rejected by Seller unless expressly and specifically accepted by a writing signed by an authorized officer of the Seller expressly for that purpose, and if rejected shall not limit or affect the binding effect of this instrument upon the parties. The Contract Documents shall bind and may be enforced by the Buyer and Seller and their respective legal representatives, successors and assigns. The Contract Documents shall be construed and applied in accordance with, and the respective rights, obligations and remedies of the parties shall be governed in all respects by, the laws of the Commonwealth of Virginia and applicable laws of the federal government of the United States (except for conflicts of law rules which would require the application of the substantive law of any other jurisdiction, which are hereby superseded).