



## Micromechatronics Inc.

200 Innovation Blvd., Suite 155 ; State College, PA 16803-6602, USA  
Phone: (814) 861-5688 ; Fax: (814) 861-1418. [www.mmech.com](http://www.mmech.com)

### TERMS OF SALE AND DELIVERY FOR ULTRASONIC CUTTERS AND RELATED OPTIONAL PARTS (APPLIES TO USW334, USW335, USW337)

**UNLESS THE PARTIES HAVE ENTERED INTO A WRITTEN AGREEMENT SIGNED BY BOTH PARTIES WHICH EXPRESSLY TAKES PRECEDENCE OVER THESE TERMS AND CONDITIONS, THE TERMS AND CONDITIONS STATED HEREIN WILL GOVERN THE SALE OF THE PRODUCT BY MICROMECHATRONICS, INC. ("SELLER") TO THE CUSTOMER ("CUSTOMER").**

**1. ENTIRE AGREEMENT.** These Terms and Conditions of Sale (this "Agreement"), shall constitute the complete and exclusive statement of all the terms of the agreement between Seller and Customer unless different, contradictory or additional terms and conditions are agreed to in a writing signed by authorized representatives of both Seller and Customer. In no event shall this Agreement be deemed an acceptance by Seller of any terms and conditions included with Customer's purchase order or similar Customer document, and Seller's performance hereunder is expressly conditioned on Customer's assent to this Agreement.

**2. PRICES.** The price to be paid by Customer shall be that stated on the Seller's formal quote or invoice. Seller's quoted prices apply for 30 days from the date of its quote or as otherwise expressly stated in its quote, provided that if Seller's costs increase or other circumstances beyond Seller's reasonable control occur, then Seller may increase the prices. Prices are for Products only and do not include taxes, imposition and any other charges, fees, shipping charges and duties imposed by any governmental authority. Customer is responsible for taxes, impositions, shipping fees, duties and other charges imposed by any government authority.

**3. PAYMENT.** Unless otherwise expressly agreed to by Seller and Customer in writing, all payments are due within thirty (30) days from the date of an invoice. Seller reserves the right to require alternative payment terms, including payment in advance by credit card or other means. Customer must give Seller written notice of any discrepancies among the purchase order, the invoice and the Products received, within five (5) days after receipt of the Products or the invoice, whichever occurs later. If Customer fails to pay, Seller reserves the right to charge Customer interest on any delinquent balance, computed on a daily basis for each day that the payment is delinquent, at the minimum rate of 1.5% per month (eighteen percent (18%) per year) or the maximum rate allowed by law. Seller reserves the right to refuse shipment to Customer if Customer is delinquent in making payments. Customer understands that any information obtained by Seller from any third party credit bureau for the purpose of verifying Customer's creditworthiness will remain the property of Seller, whether or not credit is extended.

**4. ORDERS.** All orders are subject to written acceptance by Seller and shipment or delivery schedules established in accordance with Seller's quotation and Product availability and Customer's credit status. However, Seller shall not have any liability for failure to meet a delivery date. If Seller's order acknowledgment or sales confirmation changes any of Customer's purchase order requirements, Customer will be deemed to agree to the changes unless written objection is received by Seller no later than the end of the second business day after receipt of such acknowledgment or confirmation. Orders for special, custom, value-added Products and other Products identified by Seller as non-standard are non-cancellable and non-returnable. Customer may not cancel or reschedule orders for any other Products (including those identified by Seller as standard) without Seller's prior written consent.

**5. DELIVERY, SHIPMENT AND RISK OF LOSS.** Unless otherwise expressly agreed to by Seller and Customer in writing, all Products shall be shipped EXW (Incoterms 2010), Seller's Pennsylvania warehouse, freight collect or pre-paid and added to the invoice or otherwise paid by Customer. Title and risk of loss or damage with respect to the Products shall pass to Customer upon delivery to the first common carrier. Products are deemed accepted by Customer upon delivery to the carrier. Customer is responsible for payment of all costs relating to transportation, delivery, and insurance. Customer will be responsible for filing claims relating to any lost or damaged goods. For international shipments, Customer or its properly authorized agent or freight forwarder shall be exporter of record from the United States. Customer shall be the importer of record and is responsible for complying with all import laws and regulations, obtaining import licenses, paying import license or permit fees, duties and customs fees, and any other governmental or import taxes or fees, and preparing and submitting all required documentation in connection with importing the Products.

**6. RETURNS.** The Products may be returned to Seller only under the following circumstances: (i) mis-shipments of the Products by Seller where the contents of the shipment do not match the order, or (ii) return of the Products under warranty for repairation as further specified in the Warranty section below. Products returned to Seller must have the return authorization number provided by Seller marked on the outside of the package and must include a packing slip that lists all items being returned. The items to be returned must be sent prepaid and packaged appropriately for safe shipment. Responsibility for loss or damage does not transfer to Seller until the returned item is received by Seller.

**7. LIMITED WARRANTY, EXCLUSIONS, WARRANTY EXCLUSIVE.** (a) Warranty. Seller warrants to Customer the Products sold to Customer hereunder as follows: (i) The warranty period shall run for one (1) year following the date of shipment of the Product to Customer hereunder and no warranty claim may be made after the expiration of such period, (ii) Seller warrants that at the time of shipment, the Products are free from defects in materials and workmanship under normal use and service, (iii) Seller's sole obligation shall be, at Seller's option and expense, to repair or replace the defective Product (or part), or if neither of these options is reasonably available, then Seller may, in its sole discretion, issue a credit or refund of the purchase price paid by Customer for the defective Product (or part), (iv) Customer shall pay freight and shipping charges to return any Products claimed to be defective to Seller's indicated location for Seller inspection, (v) a Product damaged in transit is the responsibility of the Customer, (vi) all repaired or replacement Products are shipped by Seller EXW (Incoterms 2010), Seller's Pennsylvania warehouse, (vii) Seller warrants the replaced or repaired Product (or part) for ninety (90) days from the date of shipment, or the remainder of the initial warranty period, whichever is longer, on the same warranty terms as in this paragraph (except for the warranty period), (viii) all Products that are replaced will become the property of Seller, and (ix) this warranty applies to Customer only and is not transferable by Customer to its customers or others. (b) Exclusions. SELLER SHALL NOT BE LIABLE UNDER THIS WARRANTY IF ITS TESTING AND EXAMINATION DISCLOSE THAT THE ALLEGED DEFECT OR MALFUNCTION IN THE PRODUCT DOES NOT EXIST OR WAS CAUSED BY CUSTOMER'S OR ANY THIRD PERSON'S MISHANDLING, DROPPING, INAPPROPRIATE SOLDERING, MISUSE, NEGLIGENCE, IMPROPER INSTALLATION OR TESTING, ALTERATIONS, ATTEMPTS TO REPAIR OR MODIFY THE PRODUCT, USE OF THE PRODUCT IN APPLICATIONS THAT EXCEED THE PRODUCT'S SPECIFICATIONS, OR ANY OTHER CAUSE BEYOND THE RANGE OF THE INTENDED USE, OR BY ACCIDENT, FIRE, LIGHTNING, POWER CUTS OR OUTAGES, OTHER HAZARDS, OR ACTS OF GOD.(C)



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WARRANTY EXCLUSIVE. IF A PRODUCT PURCHASED BY CUSTOMER HEREUNDER DOES NOT OPERATE AS WARRANTED BY SELLER ABOVE, CUSTOMER'S SOLE REMEDY FOR BREACH OF THAT WARRANTY SHALL BE REPAIR, REPLACEMENT, OR REFUND OF THE PURCHASE PRICE PAID, AT SELLER'S OPTION, AS PROVIDED IN THE FOREGOING. TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND ARE THE ONLY WARRANTY AND REMEDIES PROVIDED BY SELLER WITH RESPECT TO THE PRODUCTS, AND THERE ARE NO OTHER WARRANTIES, TERMS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, OR ARISING FROM THE COURSE OF DEALING BETWEEN THE PARTIES OR USAGE OF TRADE, INCLUDING ANY WARRANTIES, TERMS, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR BEING FREE OF THE RIGHTFUL CLAIM OF ANY THIRD PERSON BY WAY OF INFRINGEMENT OR THE LIKE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY SELLER. THESE DISCLAIMERS OF WARRANTY CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT.

**8. LIMITATION OF LIABILITY.** (a) NO NON-DIRECT DAMAGES. TO THE FULL EXTENT ALLOWED BY LAW, SELLER WILL NOT HAVE ANY LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, OR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, OR FOR ANY OTHER DAMAGES THAT ARE NOT DIRECT, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, EXCEPT FOR SELLER'S OBLIGATIONS UNDER THE PATENT AND COPYRIGHT INFRINGEMENT DEFENSE SECTION BELOW. (b) MAXIMUM LIABILITY. EXCEPT FOR SELLER'S OBLIGATIONS UNDER THE PATENT AND COPYRIGHT INFRINGEMENT DEFENSE SECTION BELOW, SELLER'S MAXIMUM LIABILITY TO CUSTOMER ARISING OUT OF OR RELATING TO THE SALE OF THE PRODUCTS TO CUSTOMER HEREUNDER SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCTS PURCHASED HEREUNDER. (c) VALIDITY. THESE DISCLAIMERS AND LIMITATIONS OF LIABILITY WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN FAILS ITS ESSENTIAL PURPOSE.

**9. ARBITRATION.** Any and all disputes, claims, and controversies between the Parties arising out of or related to this Agreement or the breach hereof (except for non-payment or late payment by Customer or any other claim where interim relief from the court is sought to prevent serious and irreparable injury to one of the Parties or to others) shall be settled by arbitration. The arbitration shall be conducted by one arbitrator under the auspices of the American Arbitration Association (AAA) and under its then-current Commercial Arbitration Rules. The power of the arbitrator shall not exceed that possessed by a Superior Court Judge in Pennsylvania. The arbitrator shall issue a written opinion in support of his or her decision, stating the legal and factual basis for the decision and the reasoning leading to such decision. The arbitrator is prohibited from awarding damages or remedies in excess of those allowed by the provisions of this Agreement. The arbitration shall be held in Centre county, Pennsylvania, or other mutually agreed location, and the award shall be deemed to be made in Pennsylvania. The decision and award of the arbitrator shall be final and binding and judgment on the award so rendered may be entered in any court having jurisdiction thereof. Both Parties will equally share the arbitrator's fee and the AAA administrative fee, but each Party shall bear its own costs and expenses, including attorney's fees, witness fees, travel expenses, and preparation costs.

**10. NOTICES.** All notices must be in writing and sent in a manner that generates a reliable written receipt, and are deemed given and effective on the earlier of (i) actual delivery (except that faxes and e-mails sent on a non-business day, according to the recipient's business calendar, will be deemed received on the next business day) or (ii) three (3) days from the date of postmark.