

THE MODAL SHOP, INC.
TERMS AND CONDITIONS OF SALE

Each quote issued by The Modal Shop, Inc. ("TMS") and the acceptance of any purchase order by TMS for TMS products shall be governed by the following Terms and Conditions. Any order accepted by TMS shall be referred to herein as the "purchase order".

1. **GOVERNING TERMS AND CONDITIONS.** EXCEPT FOR AN ORDER WHICH SPECIFIES ONLY QUANTITY AND REQUESTED DELIVERY TERMS AND IS PART OF AN ACCEPTED ORDER, NO OTHER TERM WHICH DIFFERS FROM OR ADDS TO THESE TERMS AND CONDITIONS SHALL BE BINDING UPON TMS. ANY OTHER OR DIFFERENT TERMS AND CONDITIONS PROPOSED BY BUYER ARE HEREBY EXPRESSLY REJECTED. THE PLACEMENT BY BUYER OF ANY ORDER SHALL CONSTITUTE ACCEPTANCE OF THESE TERMS AND CONDITIONS.

2. **TITLE, DELIVERY AND INSPECTION.** Products shall be delivered FCA (Incoterms 2010) TMS's facility, Cincinnati, Ohio, unless otherwise agreed in a writing signed by TMS. Title and liability for loss or damage shall pass to Buyer upon tender of goods to common carrier for shipment to Buyer. Shipping dates are approximate only. TMS shall not be liable for any costs or damages (incidental, consequential, special or otherwise) for TMS's failure to meet delivery dates. Delays experienced by TMS in obtaining a validated export license shall be deemed excusable and beyond the reasonable control of TMS. Buyer shall have a reasonable time, not to exceed thirty (30) days, to inspect goods delivered and to notify TMS of any discrepancies. Failure of Buyer to give notice under these terms shall be deemed acceptance of the applicable goods.

3. **PAYMENT TERMS.** All payments shall be made in U.S. funds. TMS may extend or withhold credit to Buyer in TMS's sole discretion. Where credit is extended to Buyer, terms of payment shall be net thirty (30) days from date of invoice. Credit may be withdrawn or subsequent shipments held by TMS at any time for late payment. Buyer shall pay interest at the rate of 1.5% per month from date of invoice for late payment.

TMS's prices are exclusive of all taxes and duties. Without limitation of the foregoing, responsibility for all customs duties and charges, sales taxes, use taxes, value-added taxes and any other taxes imposed by any federal, state, local or municipal taxing authority (excluding any taxes solely on TMS's income), shall be borne solely by Buyer. Additionally, TMS reserves the right, by giving notice to Buyer at any time before delivery, to increase the price of any product, due to a change in costs of manufacture or supply, including tariffs applicable to TMS's import of such product or its components.

4. **LIMITED WARRANTIES.**

A. **Standard Products – Limited Warranty.** TMS warrants that all TMS Standard Products, other than TMS Model Numbers 9100D, 699A06, 9110D, 699A07, 9200D, and 9210D, will be free from defects in materials and workmanship for a period of one (1) year from the date of original purchase. If any TMS Standard Product shall fail during the warranty period, TMS will repair, replace or exchange it without charge. As a further benefit under TMS's Limited Warranty for Standard Products, TMS will, for a one (1) year period following the delivery date of any TMS Standard Product, refund 100% of the customer's purchase price for any TMS Standard Product with which the original purchaser is not completely satisfied. "Standard Product" is defined to mean any product designated by TMS from time-to-time as a "Standard Product". This generally is a product listed on TMS's Price List.

B. **Portable Calibrators – Limited Warranty.** TMS warrants that all TMS Standard Product portable calibrators bearing TMS Model Numbers 9100D/699A06, 9110D/699A07, 9200D, and 9210D shall be free from defects in materials and workmanship for a period of two (2) years from the date of original purchase. If any such portable calibrator shall fail during the warranty period, TMS will repair, replace or exchange it without charge. As a further benefit under TMS's Limited Warranty for TMS Standard Product portable calibrators bearing TMS Model Numbers 9100D/699A06, 9110D/699A07, 9200D, and 9210D, TMS will, for a one (1) year period following the delivery date of any such portable calibrator, refund 100% of the customer's purchase price for any such portable calibrator with which the original purchaser is not completely satisfied.

C. **Special Products – Limited Warranty.** TMS warrants that all TMS Special Products will be free from defects in materials and workmanship for a period of one (1) year from the date of original purchase. If any TMS Special Product shall fail during the warranty period, TMS will repair, replace or exchange it without charge. As a further benefit under TMS's Limited Warranty for Special Products, TMS will, for a one (1) year period following the delivery date of any TMS Special Product, refund 50% of the customer's purchase price for any TMS Special Product with which the original

purchaser is not completely satisfied. "Special Product" is defined to mean any product designated by TMS from time-to-time as a "Special Product". This generally is a product not listed on TMS's Price List.

D. **Services Warranty.** Services are warranted to be in a workmanlike manner for a period of ninety (90) days after performance. TMS's entire liability and Buyer's exclusive remedy, whether in contract, tort or otherwise for any claim related to or arising out of the breach of warranty covering Services, will be re-performance or credit, at TMS's option.

E. **Shipping Charges.** TMS will, upon its receipt of any product under warranty, pay all shipping charges to send the repaired, replaced or exchanged product to the original point of shipment.

F. **Products Manufactured by Others.** These Limited Warranties do not cover any products manufactured by others. Products manufactured by others are subject to the warranty, if any, of their respective manufacturers, and are to be repaired only by a respective authorized service person for such products. TMS shall have no obligation to undertake repairs of products manufactured by others.

G. **Applicability.** The designation of a product as a TMS Standard Product or a TMS Special Product is based on TMS's product classification, as determined in its sole discretion, at the time of sale. If Buyer has any questions regarding the classification of a product, please contact TMS for clarification. The warranties above do not apply to products manufactured by third parties, products for which necessary components are no longer available on a commercially reasonable basis, or any TMS products damaged by accident, abuse, misuse, natural disaster or by any unauthorized disassembly, repair or modification. If there are any questions regarding power, intended application, or general usage of any TMS product, please consult with your local sales contact or distributor.

H. **No Extension of Statute of Limitations.** Any repairs performed under TMS's warranties shall not in any way extend the statute of limitations for claims under such warranties.

I. **WAIVER OF OTHER WARRANTIES. THE EXPRESS WARRANTIES SET FORTH IN THESE LIMITED WARRANTIES ARE IN LIEU OF AND EXCLUDE ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

J. **Procedure for Warranty Performance.** For any warranty claim, the Buyer must provide TMS with the applicable model and serial numbers, the date of purchase, and the nature of the problem. TMS, in its discretion, may also require that the Buyer return to TMS the product being covered under warranty.

K. **Authority to Alter These Limited Warranties.** No agent, representative, or distributor of TMS has any authority to alter the terms of these Limited Warranties in any way. These Limited Warranties may be altered only in writing by an authorized officer of TMS.

5. **LIMITATIONS OF LIABILITY.**

A. **NO INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES. TMS'S SOLE OBLIGATIONS UNDER ITS LIMITED WARRANTIES ARE SET FORTH ABOVE IN PARAGRAPHS A THROUGH E. IN NO EVENT SHALL TMS BE LIABLE TO THE BUYER OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR LOST PROFITS LOSSES OR DAMAGES OR FOR ANY FINANCIAL OR ECONOMIC LOSS CONNECTED WITH THE USE OF THE PRODUCTS ORDERED UNDER THESE TERMS AND CONDITIONS. SUCH DAMAGES FOR WHICH TMS SHALL NOT BE RESPONSIBLE INCLUDE, BUT ARE NOT LIMITED TO, LOST TIME AND CONVENIENCE, LOSS OF USE OF THE PRODUCT, THE COST OF A PRODUCT RENTAL, COSTS OF GASOLINE, TELEPHONE, TRAVEL OR LODGING, THE LOSS OF PERSONAL OR COMMERCIAL PROPERTY, LOSS OF CONTRACTS, LOSS OF PRODUCTION, AND THE LOSS OF REVENUE.**

B. **NO LIABILITY IN EXCESS OF PURCHASE PRICE. IN NO EVENT SHALL TMS'S AGGREGATE LIABILITY WITH RESPECT TO ANY PRODUCT SOLD EXCEED THE PURCHASE PRICE OF SUCH PRODUCT PLUS ANY SHIPPING CHARGES THAT TMS MAY BE OBLIGATED TO PAY PURSUANT TO PARAGRAPH 4E ABOVE. THE REMEDIES OF THE BUYER UNDER THESE TERMS AND CONDITIONS SHALL BE EXCLUSIVE AND IN LIEU OF ANY OTHER REMEDY AT LAW OR IN EQUITY.**

6. **EXPORT CONTROL.** All TMS quotes and all Buyer purchase orders issued for TMS products are subject to all U.S. Export Regulations, including, without limitation, the International Traffic in Arms Regulations (ITAR) administered by the U.S. Department of State's Directorate of Defense Trade Controls, and the Export Administration Regulations (EAR) administered by the Department of Commerce's Bureau of Industry and Security. TMS's performance on any resulting sale or contract is contingent on strict compliance with these regulations as applicable and may require prior written approval from the U.S. Government (USG) before TMS can execute the terms and conditions of the purchase order. TMS shall not be liable for delays resulting from the actions or inaction of any USG agency.

Buyer agrees to comply with the terms and conditions of all U.S. Export and Re-export Regulations, and U.S. Government written approvals related to this purchase order. Buyer agrees to indemnify and hold harmless TMS for all claims, losses, or damages, including, without limitation, reasonable attorneys' fees and expenses, incurred by TMS as a result of any failure by Buyer to comply with this Section 6.

7. **RIGHTS IN PROPERTY.** Buyer acknowledges and agrees that all right, title and interest in and to all writings, works of authorship, technology, inventions, discoveries, processes, techniques, methods, results of non-recurring engineering services, designs, validation studies, procurement information, bills of material, concepts, research, materials and all other work product of any nature whatsoever, that are created, prepared, produced, authored, edited, amended, conceived or reduced to practice by TMS individually or jointly with others pursuant to this purchase order or related in any way to the business or contemplated business, products, activities, research or development of TMS or result from any work performed by TMS for the Buyer (in each case, regardless of when or where the work product is prepared or whose equipment or other resources is used in preparing the same), all rights and claims related to the foregoing, and all printed, physical and electronic copies and other tangible embodiments thereof ("Work Product"), as well as any intellectual property rights therein and all improvements thereto shall be the sole and exclusive property of TMS. The Buyer acknowledges that, to the extent permitted by law, all Work Product consisting of copyrightable subject matter is "work made for hire" as defined in the Copyright Act of 1976 (17 U.S.C. § 101), and such copyrights are therefore owned by TMS. To the extent that the foregoing does not apply, the Buyer hereby irrevocably assigns to TMS, and its successors and assigns, for no additional consideration, the Buyer's entire right, title and interest in and to all Work Product and intellectual property rights therein, including, without limitation, the right to sue, counterclaim and recover for all past, present and future infringement, misappropriation or dilution thereof, and all rights corresponding thereto throughout the world. Nothing contained herein shall be construed to reduce or limit TMS's right, title or interest in any Work Product or intellectual property rights so as to be less in any respect than TMS would have had in the absence herein.

8. **COMPLIANCE WITH LAWS.** Buyer represents and covenants that, at all times, Buyer's use, sale, marketing and export of all TMS products shall be in accordance with all applicable laws, rules, and regulations of the United States and of any other applicable jurisdictions, including without limitation, the U.S. Foreign Corrupt Practices Act and all applicable export laws, restrictions and regulations of the United States or any applicable foreign government, agency or authority. Buyer will not export or re-export, or authorize the export or re-export, of any TMS product, technology or information it obtains or learns from TMS in violation of any laws, restrictions or regulations.

9. **APPLICABLE LAW.** The validity, performance and construction of this purchase order shall be governed by the internal laws of the State of Ohio, United States of America, without regard to principles of conflicts of law.

THE RIGHTS AND OBLIGATIONS OF THE PARTIES WITH RESPECT TO THIS QUOTE AND ANY PURCHASE ORDER ISSUED FOR TMS PRODUCTS SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

10. **CANCELLATION.** Accepted orders may be cancelled subject to the provisions of this Section 10. Any order for a TMS Standard Product may be cancelled without penalty. In the event of a customer cancellation of an order for a TMS Special Product, TMS shall have the right to charge a cancellation fee equal to fifty percent (50%) of the purchase price payable with respect to the cancelled order. Such cancellation fee is intended to reimburse TMS for its costs incurred in preparing to meet Buyer's requested delivery schedule for a TMS Special Product, including, without limitation, TMS's commitments to its suppliers, and the cost of non-stock inventory (raw materials, work-in-process and finished products) allocated to Buyer's order, together with an allowance for termination costs.

11. **ARBITRATION.** Any dispute or claim arising out of or pursuant to this quote or any purchase order for TMS products shall be submitted to final and binding arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") by one arbitrator appointed in accordance with the Rules. The site of such arbitration proceedings shall be in Cincinnati, Ohio. Judgment upon any award rendered in such arbitration may be entered in any court of competent

jurisdiction. This provision shall not limit either TMS's or the Buyer's right to obtain any provisional or equitable remedy, including, without limitation, injunctive relief from any court of competent jurisdiction, as may be necessary in the sole judgment of TMS or the Buyer, as the case may be, to protect its rights hereunder.

12. **SEVERABILITY.** If any term, provision, covenant or condition of this contract is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remainder of this contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

13. **NONWAIVER OF DEFAULT.** Each shipment hereunder shall be considered a separate transaction. In the event of any default by Buyer, TMS may decline to make further shipments. If TMS elects to continue to make shipments, TMS's actions shall not constitute a waiver of any default by Buyer or in any way affect TMS's legal remedies for any such default.

14. **ASSIGNMENT.** This contract shall not be assigned by Buyer without the prior written consent of TMS. If consent is given, this contract shall be binding upon and inure to the benefit of the assigns.

15. **ENTIRE AGREEMENT.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SALE OF GOODS DESCRIBED HEREIN AND SUPERSEDES ALL PREVIOUS COMMUNICATIONS, REPRESENTATIONS OR AGREEMENTS, EITHER ORAL OR WRITTEN. THIS AGREEMENT MAY BE CHANGED ONLY BY A MODIFICATION, IN WRITING, SIGNED BY THE BUYER AND A DULY AUTHORIZED TMS REPRESENTATIVE. NO COURSE OF DEALING OR TRADE PRACTICE SHALL ACT TO MODIFY OR INTERPRET ANY TERMS EXPRESSED IN THIS AGREEMENT.

TMS FORM – SALE TERMS AND CONDITIONS
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