

**The Modal Shop, INC. a PCB Group Company**  
**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.

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 SELLER. 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.

A. **TITLE, DELIVERY AND INSPECTION.** Products shall be delivered Ex-Works (Incoterms 2000) TMS's facility @ 3149 E. Kemper Rd, Cincinnati, OH 45241, unless otherwise agreed in writing and 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.

B. **Security Interest.**

(a) **Rental.** The provisions of this subsection (a) are applicable only in the event that the Equipment is being rented. The Equipment is The Modal Shop Inc. property. It will remain our property. You will not own the Equipment unless the Schedule gives you an option to purchase the Equipment and you have exercised that option and paid us in full for the Equipment and any other amounts you may owe us. If we request, you will put labels supplied by us stating "**PROPERTY OF THE MODAL SHOP**" on the Equipment where they are clearly visible. Although the transaction contemplated by this Agreement is intended to be a rental (and not a purchase), you hereby grant us a security interest in the Equipment in the event that this Agreement is later determined to be a purchase agreement rather than a rental agreement. Any such security interest granted pursuant to this subsection (a) shall be deemed to be a purchase money security interest.

(b) **Purchase.** The provisions of this subsection (b) are applicable only in the event that the Equipment is being purchased by you, rather than rented. To secure payment of indebtedness owed by you to us for the purchase of the Equipment, you hereby grant us a security interest in the Equipment. You agree that the security interest granted by this subsection (b) is a purchase money security interest.

(c) **Other Applicable Provisions.** The provisions of this subsection (c) are applicable whether this Agreement relates to a rental or a purchase:

(i) You give us permission to file a Uniform Commercial Code financing statement, at your expense, in order to perfect this security interest in the event that payments are not made per the terms of the Purchase Order. You also give us permission to sign your name, if required, on the Uniform Commercial Code financing statements, where this is permitted by law;

(ii) You give us permission to add to this Agreement, any Schedule or any Uniform Commercial Code financing statement, the serial numbers and other information about the Equipment;

(iii) You will pay our cost to do searches for other filings or judgments against you or your affiliates. You will also pay any filing, recording or stamp fees or taxes resulting from filing a Uniform Commercial Code financing statement;

(iv) At your expense, you will keep the Equipment free of, any legal process, liens, security interests, attachments, levies and executions. You will give us immediate written notice of any legal process, liens, attachments, levies or executions, and you will indemnify us against any loss that results to us from these causes;

(v) You will notify us at least 15 days before you change the address of your principal executive office;

(vi) You will promptly sign and return additional documents that we may request in order to protect our interest in the Equipment;

(vii) The Equipment is personal property and will remain personal property. You will not incorporate it into real estate and will not do anything that will cause the Equipment to become part of real estate or a fixture; and

(viii) You acknowledge and agree that in the event that you fail to make any payment as required under your Purchase Order when due or otherwise fail to fulfill any of your obligations under this Agreement, you will be in default, and we will have all rights of a secured creditor under the Uniform Commercial Code.

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.

4. **LIMITED WARRANTY**

A. **Total Customer Satisfaction.** TMS guarantees Total Customer Satisfaction. If, at any time you are not completely satisfied with any TMS product, TMS will repair, replace or exchange it at no charge, except as otherwise provided in this Limited Warranty. The employees of TMS strive to provide superior, unmatched customer service. Should you find yourself dissatisfied with any TMS product for any reason, consult a TMS Application engineer or local representative/ distributor to discuss your situation. If there are any questions regarding power, intended application, or general usage, please consult with your local sales contact or distributor.

B. **Purchase Price Refund/Limited Warranty.** TMS warrants to the original purchaser that, unless otherwise expressly specified in writing by TMS, all TMS products or repairs shall be free of defects in material and workmanship for a period of one (1) year from date of original purchase. In furtherance of TMS's commitment to Total Customer Satisfaction, TMS will, during the warranty period, refund 100% of the customer's purchase price for any TMS stock product or repair with which the original purchaser is not completely satisfied for any reason or any non-stock product which fails to conform with this limited warranty. This option of a refund may be selected in lieu of the repair, replacement or exchange of the product. TMS will be required to refund only 50% of the customer's purchase price for any non-stock product if such product is returned during the warranty period and is free from defects in materials and workmanship.

C. **Shipping Charges.** TMS will pay all shipping charges in connection with the fulfillment by TMS of its obligations under this Limited Warranty (i) at any time with respect to a defective product and (ii) during the first year only, if the product is not defective.

D. **Products Manufactured by Others.** This Limited Warranty does not cover any products manufactured by others. Such products are subject to the warranty, if any, of their respective manufacturers, and 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.

E. **No Extension of Statute of Limitations.** Any repairs performed under this limited warranty shall not in any way extend the statute of limitations for claims under this limited warranty.

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

G. **Procedure for Warranty Performance.** If the product fails to perform to TMS's specifications, the Buyer must provide TMS with the applicable model and serial numbers, the date of purchase, and the nature of the problem.

H. **Authority to Alter This Limited Warranty.** No agent, representative, or distributor of TMS has any authority to alter the terms of this Limited Warranty in any way. This Limited Warranty 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 WARRANTY ARE SET FORTH ABOVE IN PARAGRAPHS A, B AND C. IN NO EVENT SHALL TMS BE LIABLE TO THE BUYER OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES CONNECTED WITH THE USE OF THE PRODUCT UNDER THIS LIMITED WARRANTY. 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, AND THE LOSS OF REVENUE.

B. **NO LIABILITY IN EXCESS OF PURCHASE PRICE.** IN NO EVENT SHALL TMS'S OBLIGATIONS UNDER THIS LIMITED WARRANTY EXCEED THE PURCHASE PRICE OF THE PRODUCT PLUS ANY SHIPPING CHARGES THAT TMS MAY BE OBLIGATED TO PAY PURSUANT TO PARAGRAPH C ABOVE.

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 Seller for all claims, losses, or damages, including, without limitation, reasonably attorneys' fees and expenses, incurred by Seller as a result of any failure by Buyer to comply with this Section 6.

7. **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.

8. **APPLICABLE LAW.** The validity, performance and construction of this contract 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.

9. **CANCELLATION.** Accepted orders may be cancelled subject to the provisions of this Section 9. Orders for stock products may be cancelled without penalty. In the event of a customer cancellation of a non-stock order, 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 non-stock 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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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 – 2009 SALE TERMS AND CONDITIONS  
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