

THE MODAL SHOP, INC.
TERMS AND CONDITIONS OF RENTAL

Each quote issued by The Modal Shop, Inc. ("TMS") and the acceptance of any purchase order by TMS for the rental of 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". Please note that the purchase of products or equipment from TMS shall be covered separately by The Modal Shop, Inc. Terms and Conditions of Sale.

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 CUSTOMER ARE HEREBY EXPRESSLY REJECTED. THE PLACEMENT BY CUSTOMER OF ANY ORDER SHALL CONSTITUTE ACCEPTANCE OF THESE TERMS AND CONDITIONS.**

2. **DELIVERY AND INSPECTION.** Products shall be delivered FCA (Incoterms 2010) TMS's facility, Cincinnati, Ohio, unless otherwise agreed in a writing signed by TMS. 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. Unless Customer notifies TMS to the contrary within seventy-two (72) hours after receipt of the rented products, it shall be conclusively presumed that the products were delivered to Customer and are in good operating condition. The products may be used only at the location to which they are shipped unless written approval is granted from TMS.

3. **RENTAL PERIOD AND RATES.** The Rental Period commences one calendar day after TMS ships products to the Customer and shall in all cases extend until the date the rented products are returned to and received at TMS. Rentals are made in increments based on product type, with a minimum Rental Period detailed on the quotation and/or the Rental Agreement. Customer shall sign and return the Rental Agreement, which indicates the contracted Rental Period, and submit a purchase order before an order can be filled. Rentals not received at TMS by the end of the contracted Rental Period shall be automatically reinvoiced for the identical rental period and price. Rentals extended past the first (minimum) period but returned early in the extension period are allowed a credit applied to the final invoice, such credit shall be prorated on a daily basis started at the beginning of the extension period.

Certain rentals shall have fixed rental return dates that cannot be extended and shall be indicated on invoice or quotation.

Long-term rental discounts (for rental periods of 3 months or more) are available, and are applicable only if negotiated in advance.

Unless otherwise provided on the quotation, rates include normal packaging for shipment and receiving and receipt inspection upon return to TMS. Rental units, use of instruction books and initial operating supplies are included in the rental rate. If an order is canceled after receipt of the purchase order, a restocking fee equal to 15% of the total monthly rental fee shall be applied.

Rental rates are subject to change without notice.

4. **SECURITY INTEREST.** Products rented are the property of TMS and such products will remain TMS's property. Customer will not own the products unless the purchase order gives Customer an option to purchase the products and Customer has exercised that option and paid TMS in full for the products, together with any other amounts Customer may owe TMS. Upon TMS's request, Customer will put labels supplied by TMS stating "**PROPERTY OF THE MODAL SHOP, INC.**" on the products where they are clearly visible. Although the transaction contemplated by this purchase order is intended to be a rental (and not a purchase), Customer hereby grants TMS a security interest in the products in the event that this purchase order is later determined to be a purchase order for the purchase of products rather than a purchase order for the rental of products. Any such security interest granted pursuant to this Section 4 shall be deemed to be a purchase money security interest.

5. **PAYMENT TERMS.** All payments shall be made in U.S. funds. Customer shall pay TMS the Rental Fee indicated on the Rental Agreement for each rental interval during the contracted Rental Period, together with all sales and use taxed imposed thereon. The first Rental Period will be billed at the time of shipping and billing will occur thereafter as applicable. All amounts due hereunder shall be due according to the terms on the Rental Agreement, subject to charge on late payment accounts. TMS may extend or withhold credit to Customer in TMS's sole discretion. Where credit is extended to Customer, 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.

Customer shall pay interest at the rate of 1.5% per month from date of invoice for late payment. In the event any invoice remains unpaid for a period of thirty (30) days or more after becoming due, or the Customer is otherwise in default or breach of the Terms and Conditions herein, TMS shall have the right to terminate this Agreement and take immediate possession of the rented products and recover from the Customer in any action to enforce TMS's right hereunder, all amounts hereunder, together with TMS's costs and reasonable attorney's fees. Notwithstanding any requirements of notice of default provided above, in the event of a filing by or against Customer of a petition in bankruptcy or for reorganization or for an arrangement pursuant to the bankruptcy laws of any country, then immediately thereon TMS may take possession of the rented products and exercise any other remedies or right that TMS may have at law or in equity.

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 Customer.

6. **LIMITED WARRANTY.** TMS hereby warrants to Customer only that products, when shipped, will be in good operating condition. Should the rented product fail to operate properly during the Rental Period through no fault of the Customer and the Customer notifies TMS within two (2) days of the failure, TMS will, at its option, either repair or replace such product. This warranty does not apply if the product has been damaged by accident, abuse, misuse, or misapplication or as a result of service or modification by anyone other than TMS. **THE FOREGOING WARRANTY IS THE EXCLUSIVE WARRANTY AND IS IN LIEU OF AND EXCLUDES 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.** No agent, representative, or distributor of TMS has any authority to alter the terms of this Warranty in any way. This Warranty may be altered only in writing by an authorized officer of TMS.

7. **OWNERSHIP AND USE.** The rented products shall remain the property of TMS and are provided to Customer solely on a rental basis without any option to purchase unless such an option is granted prior to the completion of the Rental Period and explicitly set forth in writing on the Rental Agreement or some other document signed by the parties. Customer shall have sole use of the rented products and shall not sublease, rent, transfer, assign, sell, alter, modify or encumber any product without the prior written consent of TMS.

8. **SAFEKEEPING, DAMAGE, AND LOSS.** Customer shall bear the entire risk of loss, theft, damage or destruction from any cause whatsoever of the rented property, and Customer shall not be relieved of the obligation to pay rent or from any other obligation under this order. Customer shall be responsible to pay to TMS on demand the new replacement cost of any lost or materially damaged products (including accessories), as well as the cost of restoring any product that is returned with extraordinary wear and tear or damage. With respect to lost or materially damaged products, Customer shall be responsible for Rental Fees for the products, or pro-rated portion thereof, to the date of receipt by TMS of the full new replacement cost. As used herein, the term "materially damaged" means damage to the products to such an extent that the cost to repair such product equals or exceeds fifty percent (50%) of the fair market value of the product at that time. Until a damaged item has been repaired, Customer shall be responsible for all Rental Fees. Customer shall not remove or deface ownership labels, calibration seals, and anti-tamper notices affixed to the property. Customer shall insure products against risk of loss, damage, theft, or destruction for not less than the replacement cost of each item and, if requested by TMS, shall provide evidence of such insurance. If Customer fails to do so, TMS may at its option and for its benefit alone, obtain insurance and charge the cost to Customer as additional rent. Customer shall not undertake repair, modification, or disassembly of the rented products without TMS's prior written authorization.

9. **RETURN.** Property shall be returned to TMS by prepaid insured shipment, in the original shipping container. Customer shall return all rented products and accessories to TMS in good operating condition, normal wear and tear excepted. Customer shall properly pack for shipment all products being returned and shall be responsible for any damage caused during the return shipment. Customer shall pay repair charges for any products returned in damaged conditions. If accessories integral to the products are not returned, the Rental Period will not cease until such accessories are returned or replaced. All rental items not returned will be billed to Customer at replacement cost plus any rental due or \$50, whichever is greater.

10. **LIMITATIONS OF LIABILITY.**

A. **NO INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.** TMS'S SOLE OBLIGATIONS UNDER ITS LIMITED WARRANTY IS SET FORTH ABOVE IN SECTION 6. IN NO EVENT SHALL TMS BE LIABLE TO THE CUSTOMER 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 RENTED 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 RENTAL FEE.** IN NO EVENT SHALL TMS'S AGGREGATE LIABILITY WITH RESPECT TO ANY PRODUCT RENTED EXCEED THE RENTAL FEE PAID TO TMS FOR SUCH PRODUCT. THE REMEDIES OF THE CUSTOMER UNDER THESE TERMS AND CONDITIONS SHALL BE EXCLUSIVE AND IN LIEU OF ANY OTHER REMEDY AT LAW OR IN EQUITY.

11. **EXPORT CONTROL.** All TMS quotes and all Customer 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.

Customer 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. Customer 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 Customer to comply with this Section 11.

12. **RIGHTS IN PROPERTY.** Customer 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 Customer (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 Customer 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 Customer hereby irrevocably assigns to TMS, and its successors and assigns, for no additional consideration, the Customer'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.

13. **COMPLIANCE WITH LAWS.** Customer represents and covenants that, at all times, Customer'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. Customer 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.

14. **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.

15. **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 Customer'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 Customer, as the case may be, to protect its rights hereunder.

16. **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.

17. **NONWAIVER OF DEFAULT.** Each shipment hereunder shall be considered a separate transaction. In the event of any default by Customer, 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 Customer or in any way affect TMS's legal remedies for any such default.

18. **ASSIGNMENT.** This contract shall not be assigned by Customer 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.

19. **ENTIRE AGREEMENT.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE RENTAL 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 CUSTOMER 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 – RENTAL TERMS AND CONDITIONS
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