



## **TERMS AND CONDITIONS OF SALE OR RENTAL**

**ALL PURCHASES, LEASES OR RENTALS OF GOODS AND ALL PURCHASES OF SERVICES (SUCH GOODS AND SERVICES ARE THE "PRODUCTS") FROM TOP DOG TEST (Test and Measurement Parts Inc. Leaser, seller and owner) TO THE CUSTOMER ("CUSTOMER") SHALL BE PURSUANT TO THE TERMS AND CONDITIONS SET FORTH IN SECTIONS 1-7 BELOW OR INCORPORATED BELOW AND, IF THE Customers PO is "SALE" as set forth in the TERMS AND CONDITIONS IN SECTION 8 BELOW AND, IF THE Customers PO is "Lease or SALES with TERMS" The TERMS and CONDITIONS SET FORTH IN SECTION"3" IF THE CUSTOMERS PO is "RENTAL" , AS SET FORTH IN THE RENTAL TERMS AND CONDITIONS IN SECTION 9 BELOW (COLLECTIVELY, THE "TERMS"). CUSTOMER SHALL EVIDENCE ITS ACCEPTANCE OF THE TERMS BY EXECUTING THIS AGREEMENT with a PO covering any of Top Dog Tests terms that will supersede the standard terms of a customer's PO. IN THE APPROPRIATE SPACE ON THIS DOCUMENT HEREOF, HOWEVER REGARDLESS OF WHETHER CUSTOMER SO EXECUTES THIS AGREEMENT CUSTOMER SHALL BE DEEMED TO HAVE ACCEPTED THE TERMS BY ORDERING OR ACCEPTING PRODUCTS. ANY TERMS OR CONDITIONS IN CUSTOMER'S PURCHASE ORDER IN ADDITION TO OR NOT IDENTICAL WITH THE TERMS WILL BE OF NO FORCE OR EFFECT AND WILL NOT BECOME PART OF THE AGREEMENT BETWEEN THE PARTIES.**

1. Orders and Governing Terms. Orders may be initiated by written order or telephone order to Top Dog Test; however, they will not be binding upon Top Dog Test unless and until accepted by Top Dog Test in writing or by shipment of the Product ordered. All such purchase order acceptances by Top Dog Test are conditioned upon Customer's unqualified acceptance of these Terms, which acceptance shall be deemed to have occurred if Customer does not return the ordered Products to Top Dog Test within five (5) days of delivery. Customer shall be deemed to have accepted all Products unless Customer notifies Top Dog Test of Customer's non-acceptance within five (5) days of delivery. Customer may cancel or reschedule shipments of products more than thirty (30) days prior to the scheduled shipping date without charge or thirty (30) days or less prior to the scheduled shipping date, provided that Customer pays Top Dog Test twenty-five percent (25%) of the invoice price of all cancelled or rescheduled orders.

2. Shipping and Delivery. All Products shall be packed for shipment in Top Dog Test's standard containers, marked for shipment to the address specified by Customer, and delivered to a carrier or forwarding agent chosen by Top Dog Test. All shipments will be FOB Top Dog Test's shipping location, and at the time of delivery to the carrier or forwarding agent chosen by Top Dog Test all risk of loss and, in the case of a Sale, title shall pass to Customer, and all freight, insurance and other shipping expenses, as well as any special packing expenses, shall be borne by Customer. Customer shall furnish, upon Top Dog Test's request, proof that it has insured the ordered Products. Top Dog Test shall use reasonable efforts to meet acknowledged shipment dates; however, Top Dog Test shall not be liable for any damages resulting from its failure to meet such shipment dates, even if Top Dog Test has been advised of the possibility of such

damages.

3. Installment Shipments, General Payment Terms and Taxes. Every installment shipment shall be treated as a separate transaction, but in the event of default by Customer, and without any prejudice to Top Dog Test's rights under these Terms and in equity and law, Top Dog Test may decline to and/or elect to ship additional Product and such actions by Top Dog Test shall not constitute a waiver or in any way limit Top Dog Test's legal rights and remedies. Amounts outstanding for more than thirty (30) days will be subject to a monthly charge at the rate of one and one-half percent (1.5%) per month, or the maximum permitted by law, whichever is less as reasonable compensation for Top Dog Test's estimated damages from Customer's late payments. Lease and sales with terms, Top Dog Test and or our appointed representatives have the right to enter customer premises for the sole purpose repossessed from the customers premises. Unless otherwise stated in writing signed by Top Dog Test, prices are exclusive of all installation charges, sales, use, excise or other taxes or duties. Any such applicable charge, tax or duty shall be borne by Customer in addition to the prices quoted or invoiced. If Top Dog Test has any concerns as to the payment history or ability of Customer, it may ship any or all Products only against prior payment, letter of credit or C.O.D. and international shipments may be made against approved irrevocable letters of credit, payable upon delivery and in U.S. funds.

4. Limited Warranty. All Products are sold leased or rented subject to the provisions of the applicable Top Dog Test limited warranty available from Top Dog Test and expressly incorporated herein in its entirety by this reference. **TOP DOG TEST'S LIMITED WARRANTY EXTENDS TO THE CUSTOMER ONLY AND IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, AND TOP DOG TEST MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, AND TOP DOG TEST EXPRESSLY EXCLUDES AND DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Before returning any Product (including a return at the end of a Rental), Customer shall contact Top Dog Test and request the necessary return material authorization number(s).

5. Limitation of Liability. Customer agrees that Top Dog Test's liability to Customer in any way connected with the Sale or Rental of Products to Customer, regardless of the form of action, shall in no event exceed the price paid by Customer for such Products. Under no circumstances will Top Dog Test be liable for any damages resulting from Top Dog Test's failure to meet any delivery schedule, even if Top Dog Test has been advised of the possibility of such damages. **IN NO EVENT WILL TOP DOG TEST BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, OR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING IN ANY WAY OUT OF THE SALE OR RENTAL OF PRODUCTS OR SERVICES TO CUSTOMER. THIS LIMITATION SHALL APPLY EVEN IF TOP DOG TEST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

6. Software. Customer acknowledges that all software and accompanying documentation ("Software") obtained by Customer from Top Dog Test are proprietary and are subject to certain proprietary rights. Any references to "purchases" "lease" or "rental" of Software signifies only the purchase, lease or rental, as appropriate, of a license pursuant to the terms of the applicable license agreement(s). Customer agrees to be bound by all of the terms of such license agreement(s). The sale of Products to Customer shall in no way be deemed to confer upon Customer any right or interest in any proprietary rights.

## 7. Miscellaneous.

(a) Entire Agreement and Applicable Law. The Terms set forth herein and expressly incorporated by reference, including Top Dog Test's limited warranty, constitute the entire agreement between Top Dog Test and Customer with respect to the matters described herein and shall not be qualified or interpreted by any trade usage or prior course of dealing unless expressly authorized in writing by Top Dog Test. Any credits owed to customer for any reasons Top Dog Test has agreed to may be used on a future purchase lease or rental from Top Dog Test. If customer request the credit to be returned by check, customer must so request in writing and Top Dog Test will return the credit by check as soon as administratively possible. If credits remain unused for a period of six (6) months, such credits will become the property of Top Dog Test. Any suit between Customer and Top Dog Test with respect to the matters described herein and all matters related to the sale of services and/or sale lease or rental of Products by Top Dog Test to Customer shall be governed by and construed in accordance with the laws of the United States and the State of CALIFORNIA, County of ALAMEDA, without respect to its provisions concerning the application of the laws of other jurisdictions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. Any suit brought with respect thereto shall be brought in the federal or state courts in the districts, which include Hayward, California, and Customer hereby agrees and submits to the personal jurisdiction and venue thereof.

(b) Attorney Fees. Customer shall pay all of Top Dog Test's attorneys' fees and costs incurred in any action or claim relating to any breach by Customer of any of its Agreement obligations, including those set forth in Section 3.

(c) Survival. The provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement will survive and remain in effect until all obligations are satisfied.

(d) Waiver. No waiver of any right or remedy on one occasion by either party shall be deemed a waiver of such right or remedy on any other occasion.

(e) Product Changes. Top Dog Test shall have the right to make substitutions and modifications to the Products sold by it without notice to Customer, provided that such substitutions and modifications do not materially affect overall Product performance.

(f) Government Regulations. No United States government procurement regulations shall apply to Top Dog Test or this Agreement.

8. Sale Terms and Conditions. If this transaction is a Sale then the following additional terms shall apply: Customer shall pay Top Dog Test in U.S. dollars net thirty (30) days from the invoice date, which shall be on or about the date of shipment, to the payment address noted on the invoice. If Products are shipped in installments, Top Dog Test may invoice each installment separately and Customer shall pay each invoice in accordance with the Terms. Until the purchase price and all other charges payable to Top Dog Test have been received in full, Top Dog Test shall retain, and Customer hereby grants to Top Dog Test, a security interest in the Products delivered to Customer and any proceeds therefrom. Customer agrees to promptly execute any documents, including UCC financing statements, requested by Top Dog Test to document, perfect and/or protect such security interest.

9. Rental Terms Sales with Terms or Lease these following Conditions apply.:

(a) All "Rental, Lease or Sale with terms" invoices are due upon receipt. They have a 15 Day grace period before the invoice is considered "PAST DUE" "Section 3 penalties"

If two or more invoice are past due at "Top Dog Test" discretion we cease and void the original agreement of rental, lease or sale with terms.

(b) Terms of Rent. Customer agrees to rent the Products from Top Dog Test. Unless otherwise stated on the reverse hereof, the minimum rental period shall be one (1) month and the minimum rent shall be \$100. Rent will begin to accrue from the date of shipment by Top Dog Test. After the first month, the monthly rental shall be prorated on a daily basis and continue to accrue until

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the Products are received by Top Dog Test. Customer shall pay rent to Top Dog Test in U.S. dollars in advance of each monthly rental period to the payment address noted on the invoice. If Products are shipped in installments, each installment shall be deemed a separate Rental and Customer shall pay rent for each such transaction in accordance with these Terms.

(c) Nature of Transaction. This transaction is only a rental of the Products and title shall not pass to Customer, or until the complete "Term" agreement is completed with associated buyout being paid to "Top Dog Test". Customer agrees to promptly execute any documents requested by Top Dog Test to protect its rights hereunder, including protective UCC filings.

(d) Use, Maintenance and Return. Customer may use the Products only for the purposes and in the manner intended by the manufacturer thereof. Customer shall be responsible for all maintenance of the Products, provided that Top Dog Test agrees to repair or calibrate defective equipment at Top Dog Test's offices only during a warranty period for "Leases or Sales with Terms". Customer shall insure each Product in accordance with customary business practice. Each Product shall be returned to Top Dog Test at the end of the rental thereof, freight prepaid, properly packaged and in the same condition as delivered, ordinary wear and tear excepted. If Customer fails to so return any Product then Customer shall, upon demand, pay to Top Dog Test the full cost of such Product or cost to return the product to a resell able condition.

(e) Default. If Customer fails to perform the terms hereof then Top Dog Test may declare this Agreement in default. Upon such declaration, Customer shall immediately return the Products to Top Dog Test in accordance with Section 9(c) above. Such return shall not relieve Customer of its obligation to pay rent or any other amounts, which accrued hereunder prior to such return.

(f) No Purchase Options. Unless otherwise specifically provided on the reverse hereof, Customer does not have the right to purchase or acquire title to the Products at the end of the rental thereof. Any such purchase option is automatically deemed void if Customer defaults in its obligations hereunder.

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Signature

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Print

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Date