

TERMS AND CONDITIONS OF SALE OF EQUIPMENT

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ALL PRICE QUOTES ARE VALID FOR ONE WEEK, DO NOT INCLUDE ANY APPLICABLE LOCAL SALES TAXES OR SURVEY INSPECTION FEES AND ARE SUBJECT TO EQUIPMENT AVAILABILITY AT TIME OF ORDER CONFIRMATION.

1. DELIVERY All equipment is sold "AS IS" -"WHERE IS". VAPJOY LLC DBA MODALART (henceforth referred to as MODALART) shall have no liability whatsoever for loss or damage due to late delivery or non-delivery of the equipment. Furthermore, if MODALART's performance of this sale is, in whole or in part, prevented or hindered by any cause whatsoever, MODALART shall have the right to cancel without any liability on its part, all or portions of this order so affected.

2. DISCLAIMER OF WARRANTIES CONSEQUENTIAL DAMAGES. PURCHASER IS AWARE THAT ALL EQUIPMENT IS USED EQUIPMENT AND IS SOLD "AS IS". MODALART DISCLAIMS AND PURCHASER WAIVES AND RELEASES MODALART FROM ANY AND ALL REPRESENTATIONS AND WARRANTIES. EITHER EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER. INCLUDING WITHOUT LIMITATION (a) THE DESIGN, CONDITION, AVAILABILITY. OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE EQUIPMENT; (b) THE FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR USE OR PURPOSE OF PURCHASER; AND (c) THE CONFORMITY OF THE EQUIPMENT TO THE SPECIFICATIONS REQUIRED BY ANY COUNTRY OR POLITICAL SUBDIVISION WITHIN WHICH THE EQUIPMENT MAY BE USED. PURCHASER ACKNOWLEDGES AND AGREES THAT MODALART SHALL HAVE NO LIABILITY TO PURCHASER FOR ANY CLAIM. LOSS OR DAMAGE CAUSED OR ALLEGED TO HAVE BEEN CAUSED DIRECTLY, INDIRECTLY, INCIDENTALLY OR CONSEQUENTIALLY BY THE EQUIPMENT, OR BY ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN. OR BY ANY INCIDENT WHATSOEVER IN CONNECTION THEREWITH WHETHER ARISING IN STRICT LIABILITY OR OTHERWISE. UNDER NO CIRCUMSTANCES SHALL MODALART BE LIABLE HEREUNDER FOR ANY LOST PROFITS OR FOR SPECIAL CONSEQUENTIAL OF EXEMPLARY DAMAGES, EVEN IF MODALART HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

3. TAXES. Purchaser agrees to assume exclusive liability for and to pay, to prepare all necessary filings (including VAT filings that may be required under the reverse-charge provisions), indemnify and hold MODALART harmless from all sales or use taxes, transfer, title and registration fees, VAT, domestication, personal property taxes or other taxes, tolls, levies imposts duties or government charges imposed in connection with the sale of equipment or any services rendered by MODALART in connection with this sale of equipment, including any penalties fines or interest thereon. For Equipment located in Canada, Germany, India or the U K ("Country of Sale") which will be exported from the Country of Sale to a destination outside of the Country of Sale or will not be used within the Country of Sale except for (a) a single domestic journey before export of the Equipment on which inland freight may be carried between two points within the Country of Sale or (b) international movement of goods, which may include a journey within the Country of Sale for the purpose of loading or unloading the goods, Buyer acknowledges that if such Equipment is subsequently used in the Country of Sale, such Equipment it subject to seizure by Customs. Purchaser agrees to provide MODALART with proof that the Equipment has left the Country of Sale within 30 days after the event.

- * For any units with shipping line prefixes (in particular NYK, HAPAG, K-LINE, MOL), purchaser MUST ensure:**
- The removal of all owner prefixes from the equipment (inside, outside and from the CSC plate),
 - The removal of owner and operator details from CSC plate and/or customs plate, and
 - The removal of any ACEP on the equipment.

4. REMEDIES/WAIVER. The remedies reserved to MODALART herein shall be cumulative and to addition to any other or further remedies provided by law. MODALART's failure to insist on performance of any of the terms and conditions of this Agreement, or MODALART's waiver of any breach, shall not act as a waiver of any other term or condition or any subsequent breach.

5. ASSIGNMENT. Purchaser may not assign this Agreement or any of its rights or obligations herein without MODALART's prior written consent, which consent may be withheld for any reason.

6. JURISDICTION AND LAW. MODALART and Purchaser agree that any claim or controversy directly or indirectly arising out of or relating to this sale, may be litigated in the state or federal courts located in the counties of Fairfield, Connecticut, and MODALART and Purchaser hereby consent to be subject to the jurisdiction of such courts. MODALART and Purchaser agree to waive any objection to the venue of such court and not to assert any defense of forum non conveniens. MODALART and Purchaser agree that service of process upon the other may be made by mailing, a copy (by registered or certified mail) postage prepaid addressed to the respondent Party at the address shown on the reverse side hereof. Service shall be complete seven days after such process has been mailed to the respondent Party. Nothing herein shall affect the right of either Party to serve legal process in any other manner permitted by law or affect the right of either Party to bring any action or proceeding against the other Party or its property in the courts of any other jurisdiction. This Agreement shall be construed and interpreted according to the laws of the State of Connecticut.

7. ENTIRE AGREEMENT. It is understood and agreed that this Agreement and the applicable invoice embodies the complete understanding of Purchaser and MODALART relative to this sale and that the terms and conditions of this Agreement may not be revised or modified in any way except by a written instrument specifically purporting to do so signed by the Purchaser and MODALART.

8. INDEMNIFICATION. Purchaser will defend at its own expense and indemnify and hold harmless MODALART, its agent, employees and indemnities from and against any and all claims, losses, damages, liabilities, demands, actions, costs, expenses and fees (including attorneys' fees) arising out of or in connection with, the sale of the Equipment to Purchaser or any subsequent use, operation or disposition of the Equipment.

9. PICKUP/ MARKING AND ID PLATES/PAYMENT. Equipment must be picked up within 15 days of the date of release confirmation of the Equipment to Purchaser. Otherwise, MODALART may cancel the sale or charge Purchaser storage. Title to equipment will be transferred to Purchaser on date of pickup of equipment. Purchaser will promptly remove all ownership markings and identification plates*. Payment terms are listed on the applicable invoice. Overdue payments will be subject to a service charge equal to the lesser of 2% per month or the highest legal rate

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