

VisiMax Technologies, Inc.

Terms and Conditions of Sale

Aug. 2011

Terms and Conditions

Section 1 - General.

1. In these terms and conditions “we,” “us,” “our,” and “VisiMax” mean VisiMax Technologies, Inc., and “Customer,” “you,” or “your” means you the customer. These terms and conditions apply to all of our Quotations, order confirmations, and delivery agreements. In these terms and conditions some words that begin with capital letters are defined terms, which, for ease of reference, are listed at the end of this document. These terms and conditions together with your Purchase Order Confirmation constitute the entire Agreement between us and you for the sale of Product(s).

Section 2 - Quotation; Placing an Order; Offer and Acceptance; Pricing.

1. A VisiMax Quotation constitutes an invitation for an offer. Unless otherwise indicated on the face of the Quotation, the Quotation will remain valid for 90 days from its date of issuance.
2. The price we state in our Quotation does not include the cost of shipping, insurance, or any taxes that may be imposed on Product(s). Unless otherwise stated in our Quotation or Purchase Order Confirmation, the Customer is responsible for all costs related to shipping, insurance, taxes, and any additional charges we may assess for freight or special packaging and handling.
3. By sending us a Purchase Order you make an offer to us to purchase the Product(s) you selected according to these terms and conditions. All Purchase Orders must be in writing and signed by the Customer. Purchase Orders should include the Customer’s name and the name of a company contact, shipping address, email address, telephone and fax number, the requested delivery date, quantities, a quote or order reference number, and a complete description or specification of the Product(s) you wish to purchase.
4. VisiMax is not bound to accept your offer. If we do accept your offer, we will send you a Purchase Order Confirmation. You will have 3 business days from the day you receive our Purchase Order Confirmation to notify us of any corrections or changes you wish to make; failure to make corrections or changes during this time constitutes your acceptance of this Agreement. We will not commence the manufacture, initiate supply, or begin any performance on your order until you accept our Purchase Order Confirmation.
5. These terms and conditions supersede and replace any and all terms and conditions reflected in your Purchase Order. Our acceptance of your offer is expressly conditioned on your assent to the terms and conditions stated herein.

Section 3 - Cancellation Charges.

Customer may terminate a confirmed order, in whole or in part, by written notice to an authorized VisiMax representative. After receipt of your notice of cancellation, we will advise you of the value of the work performed and/or of the cost of any material purchased to fulfill your order. Thereafter, VisiMax will invoice and the Customer shall pay the pro rata purchase price of any finished work, together with the value of any work in progress, plus the purchase price of unused materials purchased to fulfill your order, not kept in our normal inventory.

Section 4 - Payment Terms.

Unless otherwise agreed to by us, payment is due thirty (30) days from the date of Product(s) shipment. If your account becomes overdue, we may assess interest on your net overdue invoice, computing interest daily at the rate of 1.5% per month or the maximum rate permitted by law, whichever is less, from the date the payment was due until paid in full. We have no obligation to continue performance under this Agreement or any other agreement we have with you if you have a delinquent account with us.

Section 5 - Payment Terms for Experimental Processing and Finishing.

For experimental processing and finishing, your confirmed Purchase Order price is payable thirty (30) days from the date of Product(s) shipment, regardless of the success of the work or the benefit derived therefrom.

Section 6 - Customer’s Property; Quality on Delivery for Processing.

1. The Customer retains all rights and title to any Materials, Merchandise, drawings, or specifications provided to us for use in generating quotes or processing orders. We will return to you all Materials and Merchandise, but to ensure the lasting quality of our Products, we retain for your account any drawings or specifications provided.
2. While Materials and Merchandise are in our possession, the Customer may not, under any circumstances, consider us an insurer; VisiMax is not liable, regardless of cause, for any loss to Materials or Merchandise by, including but not limited to, fire, explosion, theft, vandalism or act of God.
3. The Customer should include the following information with its shipment of Materials for processing: (i) reference to the applicable VisiMax quote number; (ii) a part drawing number (if not previously submitted), including any part drawing revisions and applicable date; (iii) an inspection process account or map; and, (iv) reference to the artifact used in your inspection. If environmental testing on finished Products is required, you should also include in your shipment a witness sample of the same substrate material and manufacturing processes as the parts being coated.
4. To provide Customers with the highest quality coating and finishing, and to assure Products conform to Customers’ inspection standards, VisiMax performs a post-process inspection on all of our finished Products. If you have provided us with an inspection document or map, VisiMax will inspect your coating or finishing to the inspection criteria referenced therein. If you have not provided us with an inspection document, we will inspect your coating or finishing to a default scratch-dig specification of 80-50, using an Edmunds Optics inspection paddle.

5. We assume the Materials furnished to us for treatment meet the inspection standards stated in Customers' inspection documents, if provided. We may contact you if we find that the quality of your Materials does not substantially meet your inspection standards. If your Materials require extraordinary cleaning or preparation, beyond our normal processes, we reserve the right to assess a charge against your account for our additional cleaning and handling, or to refuse to process your Materials altogether.
6. To avoid payment for Materials or Merchandise we could not process, or for Products processed unsatisfactorily due to inaccuracies or imperfections in your Materials or Merchandise, the Customer may, at its option, deliver to VisiMax up to 10% more items than the count stated in its Purchase Order Confirmation; in such case, we will process as many acceptable-quality pieces as necessary, up to the confirmed purchase order count, and return the balance.

Section 7 - Shipment and Delivery.

1. While we give each estimate in good faith and use our best efforts to service and deliver your Products in accordance with the estimate provided in your Purchase Order Confirmation, all dates, times, or periods for service and/or delivery are approximate. VisiMax is not liable for any loss, interruption of business, or general, incidental or consequential damages arising from a delay in shipment or delivery.
2. We ship Products in the same material and containers Merchandise was packaged in when we received it. If you would like us to use different materials or containers, or package your Products according to special instructions, we will accommodate your request; however, in such case, we reserve the right to assess a reasonable charge for additional handling.
3. We ship all Products F.O.B. Premises, regardless of whether VisiMax pays for shipping. Delivery to the Customer is complete, and the risk of loss or damage passed, on the Transfer of Products to a transport vehicle. International shipments are Incoterms 2000, F.O.B. port of departure from the United States. VisiMax is in no event liable for any loss or damage to Materials, Merchandise, or Product(s), incurred in transit to or from our Premises.

Section 8 - Inspection and Acceptance; Notice of Defects; Returns.

1. The Customer is responsible for the prompt inspection of Products upon their receipt. In the event that there is damage or defects reasonably discoverable upon inspection (whether such inspection is carried out or not), you must notify us in writing within ten (10) Business Days of the damaged Products' delivery. In the event that damage or defects are not reasonably discoverable upon inspection, you must (i) notify VisiMax orally within three (3) Business Days of the date the defect appeared or became reasonably discoverable, and (ii) send us written confirmation of your claim within 7 business days of your oral notification.
2. In response to a claim for damage or defects, we may request the Customer return such Products for inspection. We will send the Customer a Return Material Authorization (RMA), instructing the Customer on proper Product return. You must return Products in their original condition; if altered, the Customer is deemed to have accepted those Products. Customers shall not return Products without an authorized RMA.
3. In the event a Product is damaged or defective, we will, at our discretion, either recoat the parts, or refund to you the purchase price of the defective coating. We will also refund the charges incurred in shipping nonconforming Products back to our Premises for reprocessing.
4. If, upon inspection and in our reasonable judgment, we conclude that there are no appreciable damage or defects to the product(s), we reserve the right to return Product(s) to you at your cost.

Section 9 - Warranty; Notice of Defects; Disclaimer of Warranties.

1. We warrant that Product(s) is free from defects in material and workmanship and conforms to the description and specifications in the Purchase Order Confirmation.
2. We are entitled to inspect damaged or defective Product(s) and, at our discretion, either recoat the parts, or refund the purchase price of such coating. YOUR EXCLUSIVE REMEDY, AND OUR ENTIRE LIABILITY, FOR ANY BREACH OF WARRANTY IS LIMITED TO REPAIR OF THE PRODUCT, REPLACEMENT OF THE PRODUCT, OR CREDIT FOR THE PURCHASE PRICE OF THE PRODUCT SOLD UNDER THIS AGREEMENT. THE FOREGOING STATES THE ENTIRE LIABILITY OF VISIMAX FOR PRODUCT WARRANTY.
3. You are deemed to have accepted the Products and to have waived any warranty claim thereafter unless you notify us of the defect or damage in accordance with the terms of 8.1, above.
4. THERE ARE NO OTHER EXPRESS WARRANTIES MADE BY US. VISIMAX DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY'S RIGHTS.

Section 10 - Disclaimer on Technical Advice of Seller. CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED FROM THE USE OF ANY PRODUCT IN COMBINATION WITH OTHER ARTICLES OR MATERIAL, OR IN THE PRACTICE OF ANY PROCESS, REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS VISIMAX MAKES WITH RESPECT TO THE USE OF SUCH PRODUCTS BY WAY OF TECHNICAL ADVICE OR OTHERWISE.

Section 11 - Limitation of Liability, Indemnification, Exclusive Remedy.

1. IN NO EVENT WILL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR BREACH OF WARRANTIES BY SUCH PARTY.

2. The Customer shall indemnify and hold VisiMax harmless against any and all losses, damages, costs, or expenses of any kind incurred by reason of any liability imposed by law upon VisiMax for damages, costs, and expenses because of property damage, bodily injury or death sustained or resulting, directly or indirectly, from the sale, use, testing, or handling the Product(s) sold hereunder, unless such injury is caused solely by gross negligence on the part of VisiMax.
3. OUR ENTIRE AND AGGREGATE LIABILITY FOR ALL CLAIMS ARISING UNDER THIS AGREEMENT, WHETHER FOR INFRINGEMENT, BREACH OF WARRANTY OR CONTRACT, TORT (INCLUDING NEGLIGENCE), DELAYED DELIVERY, OR OTHERWISE, SHALL NOT EXCEED CUSTOMER'S PURCHASE PRICE (DUE OR OWING) TO VISIMAX FOR THE PRODUCTS PURCHASED UNDER THIS AGREEMENT THAT CREATE SUCH LIABILITY.

Section 12 - Force Majeure.

We are not responsible for any delay or failure to perform to the extent that delay or failure is due to contingencies beyond its reasonable control, including but not limited to acts of God, fires, floods, wars, accidents, labor disputes, and inability to reasonably obtain necessary materials, components or manufacturing facilities. We are in no event obligated to purchase materials or products from sources other than our regular suppliers to fulfill your Purchase Order.

Section 13 - Entire Agreement; Modification and Waiver; Validity of Provisions.

1. These terms and conditions prevail in the case of any inconsistency between this document and any course of dealing or usage of trade, and any conflicting or additional terms in any Purchase Order, service contract, or other document. This Agreement constitutes our and your entire understanding with respect to the sale of our Products.
2. Modification or waiver of any part of this Agreement is not binding on VisiMax unless such is set out in writing, signed by an authorized VisiMax representative. Neither our failure nor your failure to enforce any term of this Agreement constitutes a waiver of such term. Failure to enforce any term shall not affect the right to enforce such term later.
3. The invalidity or unenforceability of any provision of the Contract shall not adversely affect the validity or enforceability of the remaining provisions.

Section 14 - Defined Terms. In this Agreement, unless otherwise noted:

1. "Agreement" means these terms and conditions together with your Purchase Order Confirmation;
2. "Business Day" means any day other than a Saturday, Sunday, or a public holiday in the United States.
3. "Materials" and/or "Merchandise" means any matter or substance the Customer owns or provides to us for the purpose of processing in accordance with this Agreement;
4. "Purchase Order" means an offer placed by you in accordance with these terms and conditions;
5. "Purchase Order Confirmation" means the written confirmation issued by us to you indicating our acceptance of your Purchase Order;
6. "Product(s)" means any good or services we agree to supply to you under these terms and conditions;
7. "Premises" means the lot located at 9177 Dutton Drive, Twinsburg, Ohio 44087;
8. "Quotation" means the written description of the proposed goods or services, with associated price and delivery terms, provided by VisiMax to the Customer.
9. "Returned Material Authorization" means the documentation issued by us to you for the return of Products;
10. "Transfer of Products" means the commencement of the loading of your Products onto transport vehicles on our Premises, regardless of whether such vehicles are owned by VisiMax, the Customer, or a third party or carrier.

Section 15 - VisiMax Technologies, Inc.

VisiMax Technologies, Inc. is an Ohio corporation located at 9177 Dutton Drive, Twinsburg, Ohio 44087.