

August 1, 2009

Re: Calculated Industries' Distributor Terms

***Dear Calculated Industries Distributor:***

Calculated Industries, Inc. (CI), the maker of best-in-class specialty calculators, measuring products and tools, has independently adopted a set of terms and conditions for the distribution of certain CI branded products (Covered Products). CI's Distributor Terms are designed to protect the image and goodwill of CI and its products, brand names and trademarks, and to help ensure that CI's Covered Products are delivered through professional and knowledgeable distributors. Distributors are free to determine if they wish to follow CI's Distributor Terms or not. However, **effective August 1, 2009, to remain eligible for uninterrupted supply of CI Covered Products, distributors must comply with CI's Distributor Terms:**

1. Sell CI Covered Products only to Resellers that fully comply with CI's Advertising and Distribution Policy, attached.
2. Do not sell CI Covered Products to Resellers that utilize Internet auctions, chat rooms, or "Craig's List" to sell CI Covered Products.

CI reserves the right to change, modify, amend or discontinue CI's Distributor Terms at any time without prior notice. From time to time CI may announce in writing a change, amendment or supplement to CI's Distributor Terms, by regular mail and as posted on CI's website, at CI's sole discretion.

Please be aware that CI's Distributor Terms are a corporate policy of CI and they cannot be waived by any agent, employee, representative or other third parties. CI's Distributor Terms are not a contract, an offer to form a contract or an agreement, express or implied. CI's Distributor Terms are subject to the Laws of The State of Delaware and are applicable only to CI Covered Products sold within the United States.

If you have questions about CI's Distributor Terms, please put them in writing and send them to CI's Distributor Terms Administrator, Calculated Industries, Inc., 4840 Hytech Drive, Carson City, NV 89706, fax: 775-885-4949 .

We greatly appreciate your business and thank you for your interest.

Sincerely,

***Calculated Industries, Inc.***

Encl.: Calculated Industries, Inc. Advertising and Distribution Policy and FAQ  
cc: Sales Managers Allen Alexander and Al Muto

**This Advertising and Distribution Policy (ADP)** is designed to enhance and protect the image and goodwill of Calculated Industries and its products, brand names and trademarks, in support of its brand mission to design, develop and deliver best-in-class calculating and measuring products. It is also designed to help ensure that CI's branded product line is delivered through professional and knowledgeable Resellers that provide outstanding customer service. CI has therefore determined to do business only with qualified Resellers of its selection and upon the unilateral terms and conditions set forth in this Advertising and Distribution Policy (ADP).

This ADP is effective August 1, 2009 with respect to Authorized Resellers (Resellers) wishing to sell CI's branded products covered by this ADP (Covered Products). CI is not asking or requiring Resellers to agree to this Policy. Resellers are free to determine if they wish to follow the Policy or not. However, to be eligible for uninterrupted supply of CI's Covered Products, Resellers must, in CI's sole and independent judgment, meet the following terms and conditions:

- 1) Advertise<sup>1</sup> the Covered Products at prices no lower than shown in the attached table (the minimum advertised price or MAP), as may be updated from time to time by CI. At all times, the Reseller shall have the sole right to set and determine the selling price of the Covered Products, including in-store and point of purchase signage and materials.
- 2) Do not advertise, offer to sell or sell CI's Covered Products by any manner that reduces, disparages or injures CI or CI's Covered Products. Without limitation, this includes "Buy One, Get One Free" (BOGO's), "Half Price", "50% Off" and "We Will Not Be Undersold" promotions.
- 3) Do not advertise, offer to sell or sell CI's Covered Products in any illegal, deceptive, undesirable or improper manner, including without limitation, loss leaders, bait and switch, products without originally included accessories, or means otherwise considered by CI to be negative selling practices or an attempt to circumvent any part of this ADP.
- 4) Sell CI's Covered Products only to end-users and not to any third party for purposes of resale, barter, or other manner of secondary distribution.
- 5) Do not advertise, offer to sell or sell CI's Covered Products via means of Internet auctions, chat rooms, Craig's List, etc.
- 6) Use CI's name, trademarks, image, logos, artwork, trade dress and any other intellectual property information accurately and honestly, and do not utilize any of the foregoing to sell or offer to sell products of another manufacturer or otherwise mislead potential purchasers as to CI's products or its policies.
- 7) Comply fully with CI's terms and conditions of sale and, if an Authorized Reseller, comply fully with CI's Authorized Reseller Program.

CI reserves the sole right to select the Resellers with whom it will deal and the terms and conditions on which it will deal and deal further. A determination by CI not to deal further with a Reseller that does not meet these terms and conditions will be upon the basis of each stock-keeping unit (SKU). Where CI makes such a determination, every store in common ownership and control as the particular store that has committed a violation, i.e. the entire account, will not receive future shipment of CI's Covered Products, on a SKU basis. First time violations will be barred from purchasing the SKU in question for 90 days; Second time violators will be barred for 180 days; Third time violators will be barred from purchasing any of CI's Covered Products for one full year. All periods are from

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<sup>1</sup> *The following are examples of Internet advertising that could result in a MAP violation: displaying price below the MAP price on/in: (1) the Internet site homepage, (2) any section of the Internet site other than the shopping cart where the Covered Products are listed, displayed, represented or otherwise advertised, (3) email campaigns, and (4) Internet banner or pop-up ads. It is not considered a violation if a price below the MAP price is displayed at the shopping cart level or later steps in the checkout process.*

the date of the letter in which CI informs the Reseller of its noncompliance with these terms and conditions or when a new MAP price has been determined and published by CI, whichever is shorter.

From time to time CI may announce, in writing, a change, amendment or supplement to MAP prices, including by posting updated versions of this ADP on CI's website, at CI's sole discretion.

**This ADP is a policy statement of preannounced unilateral terms and conditions on which CI may, in exercising its discretion, select its Resellers and the criteria by which it may choose to sell the Covered Products.**

**This ADP is not a contract, an offer to form a contract or an agreement, express or implied. CI is not asking for and CI will not accept any agreement about a Reseller's compliance with this ADP. This ADP is a corporate policy of CI and cannot be waived, interpreted or discussed with any Reseller by any agent, employee, representative or other third parties, except as stated herein.**

**Under no circumstances will CI discuss its business dealings with any Reseller with any other Reseller, nor will CI seek or accept any complaints or comments from its Resellers about the pricing or business practices of any other Reseller.**

**All questions regarding this ADP should be made in writing to the Advertising and Distribution Policy Administrator at the address below.**

**CI reserves the right to change, modify, amend or discontinue this ADP at any time without prior notice. There is no assurance express or implied to any Reseller that CI will continue or enforce this ADP. CI specifically reserves the right to choose those Resellers with which it will do business and the right to accept or reject any purchase order at any time.**

**This ADP is subject to the Laws of the State of Delaware and is applicable only to CI Covered Products sold within the United States.**

Calculated Industries  
ATTN: Advertising and Distribution Policy Administrator  
4840 Hytech Drive  
Carson City, NV 89706 USA  
Fax: 1-775-885-4949

# **ADVERTISING AND DISTRIBUTION POLICY**

## **Frequently Asked Questions (FAQ)**

Calculated Industries has a new Advertising and Distribution Policy (ADP) covering many of its products (Covered Products). These Frequently Asked Questions are meant to help you understand why CI has implemented the ADP, what the ADP applies to, and how it works. If after reviewing these FAQs you have questions about the ADP, please send those questions in writing to:

**Calculated Industries**  
**Attn: Advertising and Distribution Policy Administrator**  
**4840 Hytech Drive Carson**  
**City, NV 89706 USA Fax: 1-**  
**775-885-4949**

### **1. Why has CI implemented the ADP?**

CI recognized that it is in its best interests to take steps to protect and enhance the quality image and the goodwill of its products, brand names and trademarks. The ADP is designed to give the resellers CI selects to do business with ("Resellers") sufficient margin to enable them to offer outstanding customer sales support. It is also designed to discourage "free riding" and other activities that tend to "commoditize" CI's products. Steps like these support CI's brand mission to design, develop and deliver best-in-class calculating and measuring products and outstanding customer support.

### **2. What CI products are subject to a Minimum Advertised Price (MAP) under this ADP?**

See Addendum 1 on the last page of the ADP for the complete list of Covered Products that are subject to MAP. Or visit <http://www.calculated.com/existingreseller.asp> for the latest update.

### **3. Does this mean this ADP applies only to Resellers that sell the Covered Products?**

Yes. This ADP states the terms and conditions on which CI may choose to sell the Covered Products to Resellers.

## **ADVERTISING AND DISTRIBUTION POLICY**

### **Frequently Asked Questions (FAQ)**

**4. What does "advertised price" in the ADP mean?**

"Advertised price" means the price communicated to consumers outside of a "brick and mortar" physical store. On the Internet, "advertised price" means Internet banner or pop-up ads, the Internet site home page, and any section of an Internet site, other than the shopping cart or later steps in the checkout process, including where products other than CI branded products may be listed, displayed, represented or advertised. As to email, displaying a price for the Covered Products in a mass email campaign also comes within the meaning of "advertised price".

**5. Can I still sell CI's Covered Products at the prices I choose in light of the ADP?**

Absolutely. At all times, Resellers have the sole right to determine the selling prices of CI's Covered Products, including in-store and point of purchase signage and materials. However, if the externally advertised price of CI's Covered Products is below the MAP price, CI may choose not to continue to sell CI's Covered Products to that Reseller.

**6. Can I advertise the Covered Products without a price and still comply with the ADP?**

Yes, however Resellers that wish to sell the Covered Products product line must first obtain CI's approval through CI's Authorized Reseller Program.

**7. Can I advertise, offer to sell or sell CI's Covered Products on the Internet and still comply with the ADP?**

Yes; however Resellers that wish to sell the Covered Products must first obtain CI's approval through CI's Authorized Reseller Program.

**8. Can a Reseller advertise, offer to sell or sell CI's Covered Products using eBay or other Internet auction sites on the Internet and still comply with the ADP?**

No, such activities with eBay or other auction sites, chat rooms, Craig's List, user groups member forums, listservs, etc. do not comply with the ADP. In such event, CI may choose, in its sole discretion, not to continue to do business with a Reseller.

## **ADVERTISING AND DISTRIBUTION POLICY**

### **Frequently Asked Questions (FAQ)**

**9. What will CI do if I follow MAP on some ads but not others or if I otherwise misapply the ADP's MAP terms?**

CI may, in its sole discretion, choose not to sell to Resellers that comply with the ADP on some ads but not others or that, for one reason or another, including the misapplication of the ADP by the Reseller's agents or employees, do not follow the ADP. While Resellers have the discretion to choose whether to follow the ADP or not, a Reseller wishing to follow the ADP is responsible for taking adequate steps to ensure that its employees and agents understand and correctly apply the ADP at all times.

**10. Can I issue coupons for the Covered Products and still comply with the ADP?**

Yes. So long as a Reseller does not advertise the Covered Products at a price below MAP, the Reseller may issue a coupon that results in the net sales price to the customer at a price less than MAP and still comply with the ADP. The ADP only applies to advertised prices, not to the consumer's net sales price.

**11. Is the ADP lawful?**

The ADP is both a business and a legal document. Its legal basis is the United States Supreme Court's 1919 decision in *United States v. Colgate & Co.*, 250 U.S. 300 (1919) ("Colgate"). In *Colgate*, the Supreme Court held it was lawful for a supplier to pre-announce the terms and conditions on which it would continue to deal with a customer. One of these terms and conditions may be the price at which a reseller advertises a product purchased from the supplier, to be resold to the reseller's customer. These two features are incorporated in the ADP. The ADP gives CI the right to refuse to deal, or deal further, to Resellers that do not follow CI's preannounced terms and conditions, including Resellers that advertise the Covered Products at prices below MAP.

**12. Isn't it unlawful for a supplier and a Reseller to agree on the price the Reseller must resell the product to its customer?**

Yes it is. Section 1 of the Sherman Antitrust Act of 1890 (Sherman Act) and its state law counterparts condemn vertical minimum resale price maintenance (RPM) where the prices are agreed upon by the supplier and Resellers. A supplier and a reseller would both be liable under Section 1 and state law for agreeing on RPM.

## **ADVERTISING AND DISTRIBUTION POLICY**

### **Frequently Asked Questions (FAQ)**

#### **13. So how is the ADP different from this?**

First, in the ADP, there is no agreement between CI, the supplier, and its Reseller. There is no contract. There is no offer to form a contract or an agreement. All the ADP does is pre-announce the terms and conditions on which CI has unilaterally chosen to select Resellers it may do business with. Resellers may choose whether or not to follow it. However, if a Reseller chooses not to abide by CI's pre-announced set of terms and conditions, CI may determine not to sell its products to that Reseller. But there still is no agreement. Second, CI's ADP only pertains to advertised prices, not minimum resale price. In the case of the Covered Products, Resellers' advertised prices may differ from transaction prices. Plus, MAP policies, unlike RPM agreements, are not per se unlawful under the antitrust laws.

#### **14. How do "pre-announced unilateral terms and conditions" differ from an agreement between CI and the Reseller?**

In a unilateral statement, CI pre-announces, in writing, the terms and conditions on which it may supply its products to a Reseller. This is the essence of a lawful Colgate policy. A Colgate policy does not seek, and will not accept any statement or expression of agreement or assent by a Reseller. It is up to the Reseller whether or not it wishes to abide by the pre-announced terms and conditions. Should a Reseller offer a statement of agreement, and should it be accepted by the supplier, the lawful Colgate policy could be "morphed" into an unlawful RPM agreement. This is why it is important to be clear, as the ADP states:

**"This ADP is not a contract, an offer to form a contract, or an agreement, express or implied. It is a policy statement of unilateral terms and conditions upon which CI may exercise its discretion. CI is not asking for and CI will not accept any agreement about a Reseller's compliance with this ADP. This ADP is a corporate policy of CI and cannot be waived, interpreted, or discussed with any Reseller by any agent, employee, representative or other third parties, except as stated herein."**

## **ADVERTISING AND DISTRIBUTION POLICY**

### **Frequently Asked Questions (FAQ)**

**15. Can I ask questions about or discuss the ADP with CI's employees and sales reps?**

CI's employees and sales reps are prohibited from discussing or answering questions about MAP with Resellers. This is because such discussions could be misunderstood, misrepresented or both. Discussions could supply evidence from which a judge or jury might determine that the ADP was the product of an agreement, prohibited by the antitrust laws, and not the unilateral pre-announcement of terms and conditions, which is lawful under Colgate. This is in the Reseller's interest too because the Reseller would likewise be liable for entering into an agreement that is prohibited by the antitrust laws. By directing all communications concerning pricing, advertised prices, and the ADP to Calculated Industries' Advertising and Distribution Policy Administrator, a Reseller may obtain a complete, accurate and documented response to a question without exposing itself to the risk that another person could use a discussion of the ADP as evidence of an unlawful agreement.

**16. What can I do if I find out that another Reseller is not advertising the Covered Products at or above the MAP prices or if I believe a competing Reseller is not complying with the ADP's other terms and conditions?**

First, as the ADP says, CI will not "seek or accept any complaints or comments from its Resellers about the pricing or business practices of any other Reseller." CI's employees and sales reps are not authorized to discuss a Reseller's pricing, advertised prices, or business practices with a competing Reseller.

Second, if you wish to talk to someone at CI about MAP or the ADP, please write to CI's Advertising and Distribution Policy Administrator. CI will independently investigate any information it receives, from any source, about noncompliance with the ADP. However, CI does not seek such information. Any action CI takes relating to Reseller noncompliance will be handled independently by CI and will not be communicated to third parties.

**17. If I have a question relating to the ADP where should that question be directed?**

Any and all questions relating to the ADP should be submitting in writing to Calculated Industries, Attn: Advertising and Distributor Policy Administrator, 4840 Hytech Drive, Carson City, NV 89706, Fax: 1-775-885-4949.

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*A current list of Covered Products can be found at*  
<http://www.calculated.com/existingreseller.asp>

