

CONDITIONS FOR THE PURCHASE OF GOODS AND SUPPLY OF SERVICES

1. Interpretation

1.1 The following definitions apply in these Conditions.

"Business Day";	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
"Business Hours";	the period from 8.00 am to 4.00 pm Monday to Friday and then 8.00 am to 3.30pm
"Commencement Date";	has the meaning given in clause 2.2
"Conditions";	these terms and conditions as amended from time to time in accordance with clause 16.8.
"Contract";	the contract between Modul-System and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.
"Deliverables";	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
"Delivery Location";	has the meaning given in clause 4.2.2.
"Goods";	the goods (or any part of them) provided by the Supplier as further set out in the Order.
"Goods Specification";	any specification for the Goods, including any related plans and drawings, that is agreed in writing by Modul-System and the Supplier.
"Intellectual Property Rights";	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or

unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Modul-System"; Modul-System Limited, a company registered in England and Wales with company number 01540940.

"Modul-System Materials"; has the meaning given in clause 5.3.9.

"Order"; Modul-System's order for the supply of Goods and/or Services, as set out in Modul-System's purchase order form.

"Services"; any services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Order and/or Service Specification.

"Service Specification"; any description or specification for the Services agreed in writing by Modul-System and the Supplier.

"Supplier"; the person or firm from whom Modul-System purchases the Goods and/or Services.

- 1.2 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 A reference to **writing** or **written** includes fax and email.

2. Basis of contract

- 2.1 The Order constitutes an offer by Modul-System to purchase Goods or Services or Goods and Services from the Supplier in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:

- 2.2.1 the Supplier issuing written acceptance of the Order; or
 - 2.2.2 any act by the Supplier consistent with fulfilling the Order,
- at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
 - 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
 - 2.5 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

3. Supply of Goods

- 3.1 The Supplier shall ensure that the Goods shall:
 - 3.1.1 correspond with their description and any applicable Goods Specification;
 - 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Modul-System, expressly or by implication, and in this respect Modul-System relies on the Supplier's skill and judgement;
 - 3.1.3 where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
 - 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 3.3 Modul-System may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.4 If following such inspection or testing Modul-System considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, Modul-System shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

- 3.5 Modul-System may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. Delivery of Goods

- 4.1 The Supplier shall ensure that:
- 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - 4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 4.1.3 it states clearly on the delivery note any requirement for Modul-System to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 4.2 The Supplier shall deliver the Goods:
- 4.2.1 on the date specified in the Order or, if no such date is specified, then within such number of days as Modul-System (acting reasonably) may specify;
 - 4.2.2 to such location as is set out in the Order or as instructed by Modul-System before delivery (**Delivery Location**); and
 - 4.2.3 during Business Hours or as instructed by Modul-System.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 The Supplier shall not deliver the Goods in instalments without Modul-System's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Modul-System to the remedies set out in clause 6.1.
- 4.5 Title and risk in the Goods shall pass to Modul-System on completion of delivery.

5. Supply of Services

- 5.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to Modul-System in accordance with the terms of the Contract.

- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or that Modul-System notifies to the Supplier and time is of the essence in relation to any of those performance dates.
- 5.3 In providing the Services, the Supplier shall:
- 5.3.1 co-operate with Modul-System in all matters relating to the Services, and comply with all instructions of Modul-System;
 - 5.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - 5.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
 - 5.3.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that Modul-System expressly or impliedly makes known to the Supplier;
 - 5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - 5.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Modul-System, will be free from defects in workmanship, installation and design;
 - 5.3.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
 - 5.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of Modul-System's premises;
 - 5.3.9 hold all materials, equipment and tools, drawings, specifications and data supplied by Modul-System to the Supplier ("**Modul-System Materials**") in safe custody at its own risk, maintain Modul-System Materials in good condition until returned to Modul-System, and not dispose of or use Modul-System Materials other than in accordance with Modul-System's written instructions or authorisation;
 - 5.3.10 not do or omit to do anything which may cause Modul-System to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Modul-System may rely or act on the Services; and
 - 5.3.11 comply with any additional obligations as set out in the Service Specification.

6. Modul-System remedies

- 6.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, Modul-System shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:
- 6.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 6.1.2 to refuse to accept any subsequent performance of the Services or delivery of the Goods which the Supplier attempts to make;
 - 6.1.3 to recover from the Supplier any costs incurred by Modul-System in obtaining substitute goods or services from a third party;
 - 6.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided or Goods that it has not delivered; and
 - 6.1.5 to claim damages for any additional costs, loss or expenses incurred by Modul-System which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, Modul-System shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:
- 6.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 6.2.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - 6.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 6.2.5 to recover from the Supplier any expenditure incurred by Modul-System in obtaining substitute goods from a third party; and
 - 6.2.6 to claim damages for any additional costs, loss or expenses incurred by Modul-System arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 6.3 If the Supplier has supplied Services that do not comply with the requirements of clause 5.3.4 then, without limiting or affecting other rights or remedies available to it, Modul-System shall have one or more of the following rights and remedies:

- 6.3.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 6.3.2 to return the Deliverables to the Supplier at the Supplier's own risk and expense;
 - 6.3.3 to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
 - 6.3.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - 6.3.5 to recover from the Supplier any expenditure incurred by Modul-System in obtaining substitute services or deliverables from a third party; and
 - 6.3.6 to claim damages for any additional costs, loss or expenses incurred by Modul-System arising from the Supplier's failure to comply with clause 5.3.4.
- 6.4 These Conditions shall extend to any substituted or remedial services or repaired or replacement goods supplied by the Supplier.
- 6.5 Modul-System's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

7. Modul-System's obligations

- 7.1 Modul-System shall:
- 7.1.1 provide the Supplier with reasonable access at reasonable times to Modul-System's premises for the purpose of providing the Services; and
 - 7.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request.

8. Charges and payment

- 8.1 The price for the Goods:
- 8.1.1 shall be the price set out in the Order; and
 - 8.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by Modul-System.
- 8.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Modul-System, the charges shall include every cost and expense of the Supplier

directly or indirectly incurred in connection with the performance of the Services.

- 8.3 In respect of the Goods, the Supplier shall invoice Modul-System on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice Modul-System on completion of the Services. Each invoice shall include such supporting information required by Modul-System to verify the accuracy of the invoice, including the relevant purchase order number.
- 8.4 In consideration of the supply of Goods and/or Services by the Supplier, Modul-System shall pay the invoiced amounts within 30 days end of month, of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.5 All amounts payable by Modul-System under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Modul-System, Modul-System shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the date the dispute is resolved until payment.
- 8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow Modul-System to inspect such records at all reasonable times on request.
- 8.8 Modul-System may at any time, without notice to the Supplier, set off any liability of the Supplier to Modul-System against any liability of Modul-System to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, Modul-System may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Modul-System of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

9. Intellectual property rights

- 9.1 The Supplier hereby assigns to Modul-System all existing and future Intellectual Property Rights in the Deliverables and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not

vest automatically by operation of law or under this Agreement, the Supplier holds legal title in the Deliverables on trust for Modul-Systems.

- 9.2 The Supplier waives any moral rights in the Deliverables to which they are now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such Deliverables or other materials infringes the Supplier's moral rights.
- 9.3 Modul-System grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any Modul-System Materials provided by Modul-System to the Supplier for the term of the Contract solely for the purpose of providing the Services to Modul-System.
- 9.4 The Supplier acknowledges that all rights in Modul-System Materials are and shall remain the exclusive property of Modul-System.

10. Indemnity

- 10.1 The Supplier shall indemnify Modul-System against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Modul-System arising out of or in connection with:
 - 10.1.1 any claim made against Modul-System for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding Modul-System Materials);
 - 10.1.2 any claim made against Modul-System by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and
 - 10.1.3 any claim made against Modul-System by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 10.2 This clause 10 shall survive termination of the Contract.

11. Insurance

During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on Modul-System's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12. Confidentiality

- 12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
 - 12.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
 - 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13. Termination

- 13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 13.1.1 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified [in writing] to do so;
 - 13.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- 13.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 13.1.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

14. Consequences of termination

- 14.1 On termination of the Contract, the Supplier shall immediately deliver to Modul-System all Deliverables whether or not then complete, and return all Modul-System Materials. If the Supplier fails to do so, then Modul-System may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 14.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 14.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

15. Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 8 weeks, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

16. General

16.1 Assignment and other dealings.

- 16.1.1 Modul-System may assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 16.1.2 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

- 16.2 **Notices.** Any notice given under this Contract shall be in writing and shall be delivered or sent by pre-paid registered post or by email to the address of the relevant party as set out in the Order, or to such address within the

United Kingdom as subsequently notified to the other party from time to time. In the case of post, the notice shall be deemed to have been received 48 hours after it was posted, and in the case of email, provided no notice of non-delivery is received, as soon as it has finished being sent unless this time falls outside 9:00am to 5:00pm on a Business Day, in which case it will be deemed to have been received on the next Business Day.

- 16.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 16.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 16.6 **Entire agreement.**
- 16.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 16.6.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 16.7 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

- 16.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 16.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 16.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.