

## **DATA MODUL ITALIA S.r.l. General Sales Conditions**

### **1. Scope of validity**

1.1 These DATA MODUL General Sales Conditions (in the following: GSC) shall apply to all contracts regarding deliverable and performance by DATA MODUL.

1.2 These GSC shall apply exclusively. Any deviating, different, supplementary or contravening conditions by the customer will not become an integral part of the contract, unless accepted in writing by DATA MODUL. This also applies if DATA MODUL, without reservation, provides the customer with a delivery or service, in the awareness of such terms and conditions set by the customer unless DATA MODUL has expressly approved such terms in writing.

1.3 These GSC shall also apply to all future business relationships and contracts regarding deliverable and performance between DATA MODUL and the customer.

1.4 All agreements concluded between DATA MODUL and the customer concerning deliverable and performance shall be set out in writing in the relevant contract and in any additional agreements.

1.5 These GSC shall only apply in relation to companies and legal persons acting within their professional activity.

### **2. Conclusion of the contract**

2.1 If a customer order is an offer as per the Italian Civil Code, DATA MODUL may accept this offer by the customer within four weeks after receipt.

2.2 Offers made by DATA MODUL are non-binding.

2.3 An agreement concluded between DATA MODUL and the customer shall not become valid until DATA MODUL has provided written confirmation of the order. The dispatch of an invoice as well as delivery and/or service by DATA MODUL shall be equivalent to the confirmation of an order.

2.4 DATA MODUL retains ownership rights and copyrights to illustrations, drawings, calculations, films, models, slides, repros, photostats and other documents; these may not be made accessible to third parties or used by the customer for the benefit of himself or third parties without DATA MODUL's written consent. DATA MODUL shall otherwise be entitled to demand compensation, notwithstanding further rights or actions.

### **3. Remuneration, time of payment, default in payment, set-off, right of retention**

3.1 DATA MODUL prices are ex works in accordance with the 2.000 version of the Incoterms. Packaging costs and the costs of taking back packaging shall be invoiced separately, as per the relevant agreement. The same shall apply for shipping costs if the customer requests shipping. Unless agreed otherwise, the mode and route of shipping shall be at the discretion of DATA MODUL.

3.2 If the subject matter of the contract is an imported merchandise, the euro (€) price stated in the order confirmation is based on the foreign currency exchange rate applicable on the date of the order confirmation.

3.3 Any and all freight charges, customs duties, import and export charges, cost due to exchange rate fluctuations and any other tax, duties, charges and expenses as well as any relevant increase occurred following the conclusion of a contract and prior to delivery of the merchandise or performance of the service, shall be borne by the customer in addition to the agreed price.

3.4 The legally applicable rate of value added tax is not included in DATA MODUL's prices. The invoice will clearly and separately show the value added tax at the applicable rate.

3.5 The relevant remuneration shall become due for payment immediately upon receipt by the customer of the delivery or service.

3.6 In the event of non-payment of the agreed consideration, the client will be automatically on default, without need of further reminder or notice to pay, elapsed two weeks as of the date of delivery of the goods or the services or, if following, as of the date of the receipt of the relevant invoice or, at the latest, if following, as of the date agreed for the receipt of the consideration.

3.7 In the event of payment delay relating to claims of the delivery of goods and/or services, default interest in the amount of 12% p.a. shall become due. The right of DATA MODUL to claim a greater level of damage remains unaffected. The customer shall prove the occurrence of damage to DATA MODUL. DATA MODUL is entitled to claim default interest pursuant to art. 5 Italian Legislative Decree 231/2002.

3.8 In the event of payment delay not relating to claims of the delivery of goods and/or services, default interest in the amount of 9% p.a. shall become due. The right of DATA MODUL to claim a greater level of damage remains unaffected. The customer shall prove the occurrence of a damage to DATA MODUL. DATA MODUL is entitled to claim default interest in the amount of 5 percentage points above the base interest rate of the European Central Bank (ECB).

3.9 The customer shall only have a right of set-off or retention if his counterclaim is res judicata, uncontested, or acknowledged by DATA MODUL.

### **4. Period of delivery and performance, default**

4.1 DATA MODUL shall be entitled to provide partial deliveries and services if these are not unreasonable for the customer.

4.2 Delivery periods and delivery dates shall be binding only when agreed upon expressly and in writing. Delivery periods have been complied with if the subject matter of the contract has left the works prior to their expiry or if notice has been provided of readiness for shipping

4.3 If shipping is delayed at the customer's request, the merchandise shall be stored at DATA MODUL at the customer's expense and risk.

4.4 Force majeure events shall entitle the parties - even during a default period - to postpone the delivery or service for the duration of the hindrance of performance. All circumstances for which DATA MODUL is not responsible and which make it impossible or unreasonably difficult for DATA MODUL to provide the delivery or service shall be equivalent to force majeure; these include, in particular, a lawful strike or lockout, war, import and export bans, energy and raw material shortages, official measures, unpunctual self-supplying for which DATA MODUL is not responsible. If the duration of the hindrance of performance exceeds two months, the customer shall be entitled, after setting an appropriate grace period, to rescind the agreement if he proves that the wholly or partially outstanding fulfilment of the agreement is no longer of interest for him due to the default. Termination of the contract due to other reasons will remain unaffected.

4.5 If, in the event of DATA MODUL already having defaulted, the customer sets in writing an appropriate period for performance and simultaneously declares that he will reject the service on expiry of this period, upon the expiry without results of this grace period he shall be entitled to rescind the agreement. This period must be at least four weeks.

4.6 Default-based compensation claims against DATA MODUL shall be in accordance with section 8.

4.7 DATA MODUL's compliance with its deliverable and performance obligation requires the customer's punctual and proper fulfilment of all his contractual obligations.

4.8 If the customer defaults on accepting delivery of the merchandise or violates other obligations to cooperate, the risk of accidental loss or accidental deterioration of the subject matter of the contract shall pass to the customer at the moment in time at which the customer defaults on acceptance of delivery.

### **5. Passing of risk, transportation insurance**

5.1 Unless stated otherwise in the order confirmation, ex works delivery is agreed. The risk passes to the customer when the subject matter of the contract is handed over to the person carrying out the transportation. This shall also apply to transportation carried out by DATA MODUL.

5.2 In case merchandise is shipped, DATA MODUL will, at the customer's request and expense, effect transportation insurance. The customer shall provide written notice of damage in transit to both DATA MODUL and the carrier without delay, however, within 5 days at the latest.

### **6. Third party rights**

6.1 The customer will notify DATA MODUL immediately if third parties claim infringement of patents or other industrial property rights.

6.2 If and insofar as a contractual obligation exists in this respect, DATA MODUL shall release the customer from third party claims, to the extent admitted by the law, subject to the customer fully entrusting DATA MODUL with the legal defence.

6.3 In case of custom made changes of DATA MODUL's standard products in accordance with specifications provided by the customer, Data Modul shall have no duty to inquire any conflicting third party patents or other industrial property rights. Customer will indemnify and hold Data Modul harmless from all claims, damages, costs and reasonable attorney fees which accrue out or in connection with any third party infringement of such custom made changes.

6.4 Unless otherwise agreed in writing, all patents and other industrial property rights which accrue out of or in connection with the custom made changes products by DATA MODUL in accordance with specifications provided by the customer shall belong exclusively to DATA MODUL. DATA MODUL hereby grants the customer a non-exclusive, worldwide license in the patents and other industrial property rights for the use of the custom made products.

### **7. Warranty for defects**

7.1 The following warranty rights of the customer require that he has properly met his obligations to examine the merchandise and make a complaint in respect of a defect thereof immediately upon receipt. The customer shall examine the merchandise whether it is in compliance with the specification agreed with DATA MODUL in writing. If such a specification has not been provided by DATA MODUL the specification provided by the manufacturer in respect of the supplied merchandise shall act as standard. The customer shall submit in writing complaints concerning obvious defects to DATA MODUL immediately, but no later than eight days after receipt of the merchandise.

7.2 Advertising statements or other public expressions and declarations by third parties shall not establish any defect in quality. In this regard, DATA MODUL's warranty is excluded.

7.3 DATA MODUL will at its own discretion redeliver or repair merchandise proving to be defective at the moment of the passing of risk (subsequent performance). DATA MODUL may refuse the chosen form of subsequent performance, or the subsequent performance overall, if this is only possible at disproportionate costs. Subsequent performance is deemed to have failed if three attempts by DATA MODUL to subsequently perform have failed or if DATA MODUL have refused subsequent performance according to section 7.3, clause 2.

7.4 Defective merchandise may only be returned to DATA MODUL for the purpose of subsequent performance with DATA MODUL's written consent. Transport costs incurred to this end shall be borne by the customer. The risk of accidental destruction or loss of the returned merchandise shall not pass to DATA MODUL until the merchandise is handed over to DATA MODUL at its place of business. If DATA MODUL delivers a merchandise free of defects for the purpose of subsequent performance, the customer must return the supplied product.

7.5 If DATA MODUL is not prepared or able to remedy defects or, in particular, if this is delayed in excess of reasonable time on grounds for which DATA MODUL is responsible, or if subsequent performance according to section 7.3 fails or is not possible otherwise, the customer shall, at his discretion, and as permitted by law, be entitled to demand the termination of the contract or a price reduction and compensation. Subsequent performance shall not be considered impossible until three unsuccessful attempts have been made.

7.6 DATA MODUL's period of limitation for claims based on defects, including compensation claims, shall be 1 year starting in accordance with the applicable statutory statute of limitations. Sections 8.1 to 8.4. shall also apply in respect to a compensation claim. Sections 1491 and following of the Italian Civil Code shall apply.

7.7 In the event of modifications to the subject matter of the contract carried out by the customer or undertaken by third parties without DATA MODUL's prior written consent, the warranty shall cease unless the customer proves that there is no causation between the modification and the defect which has occurred.

## **8. Liability**

8.1 DATA MODUL shall be fully liable for gross negligence and intent.

8.2 Except for the case of wilful misconduct of DATA MODUL, DATA MODUL's liability is limited to the typical foreseeable damages to the given type of contract at the time of its conclusion. If the customer's negligence has concurred in the causation of the damage, its compensation shall be reduced on the basis of the negligence and its consequences. In any case, DATA MODUL shall not be liable for the compensation of damages that the customer could have avoided by using ordinary diligence.

8.3 In case of initial impossibility, DATA MODUL shall only be liable if DATA MODUL was aware of the events of default or if its ignorance of these events was based on gross negligence.

8.4 Insofar as DATA MODUL's liability is excluded or limited, this limitation shall also apply to the personal liability of its employees, workers, staff members, representatives and vicarious agents.

8.5 With the exception of claims based on tort, all compensation claims by the customer for which the liability is limited in accordance with this section shall be time-barred one year after the beginning of the applicable statutory limitation period.

## **9. Retention of title**

9.1 DATA MODUL shall retain ownership of the supplied merchandise until all such claims have been met as are applicable against the customer at the moment of the agreement's conclusion on account of business relations. This shall also apply for future claims acquired by DATA MODUL as a result of its ongoing business relationship with the customer.

9.2 In the event of customer behaviour which is culpably in violation of the agreement, particularly default on payment, DATA MODUL shall be entitled to repossess the subject matter of the contract.

9.3 The customer shall be entitled to resell to third parties the subject matter of the contract during his ordinary course of business provided he is not in default on payment. He grants to DATA MODUL the call option right on all such receivables equalling the amount of the final invoice for DATA MODUL's claim (including value-added tax) as accrue to him against his customers or third parties as a result of the resale, regardless of whether the subject matter of the contract is resold with or without modification. DATA MODUL accepts this call option right, made safe and without waiver of any and all rights to ask for the original customer's payment obligations arising from the relevant contractual relationship. The customer remains authorised to call in this receivable until DATA MODUL exercise its call option right on such receivables. DATA MODUL undertakes not to call in the amount owed if the customer meets his payment obligations arising from the relevant contractual relationship, does not default on payments, and in particular, if no application for insolvency proceedings has been filed or payments have not been suspended. If this does occur, however, DATA MODUL may demand that the customer provides notice of the transferred claims and his creditors, provides all information necessary to call in the claims, hands over related documents and, once the call option right has been exercised and, as a result, the receivables have been transferred to DATA MODUL, informs and notify the debtors (third parties) of the transfer. Should the third party be in default in respect of the call in of such receivables the customer shall remain liable in this respect and DATA MODUL shall be entitled to ask the customer for the original customer's payment obligations arising from the relevant contractual relationship.

9.4 Processing or amelioration of the merchandise by the customer will always be undertaken for DATA MODUL. If the merchandise is processed using other objects which do not belong to DATA MODUL, DATA MODUL shall obtain co-ownership of the new objects in the ratio of the value of the merchandise relative to the other processed objects at the time of the processing. Moreover, the same shall apply for the object resulting from the processing as for the merchandise provided subject to a reservation. If the merchandise is inseparably combined with other objects which do not belong to DATA MODUL, DATA MODUL shall obtain co-ownership of the new object in the ratio of the value of the merchandise relative to the other combined objects at the time of the combination. If the combining occurs in such a way that the customer's object is to be regarded as the main object, it is agreed that the customer shall confer co-ownership on DATA MODUL on a pro rata basis. The customer shall reserve the sole ownership or co-ownership thus achieved for DATA MODUL.

9.5 In cases of seizures or other third party access to the sold merchandise, the customer will specify DATA MODUL's property and inform it immediately in order to provide DATA MODUL with the opportunity to bring action against the third party. If the third party is not able to reimburse DATA MODUL for the court and out-of-court costs incurred through the assertion of its ownership rights, the customer shall be liable in this respect.

9.6 If the value of the existing collateral exceeds globally the value of the secured good or service increased of 20%, DATA MODUL shall be obliged, upon client's request, to reduce the value of said collateral to the extent of the value of the secured good or service, increased as above. DATA MODUL has the faculty to choose the type of collateral subject to said reduction.

## **10. Export**

The customer may only export merchandise and technical information supplied by DATA MODUL in compliance with applicable export regulations and must impose the same obligation on his customers.

## **11. Labelling of origin**

Any change to the performance or service provided by DATA MODUL, particularly its identification which contains a customer or third party origin, or creating the impression of a customer or third party produced product is not permissible unless DATA MODUL has provided its prior written permission in this respect.

## **12. Sale on approval**

12.1 Where the supply of a sample or test equipment is agreed, the customer may rescind the agreement within the agreed period by making a declaration of unacceptability.

12.2 The above-stated general terms and conditions of business apply in respect of a sale on trial; in particular, that the risk passes to the customer according to clause 5.1.

12.3 In the event of a declaration of unacceptability or if the agreed conditions do not apply, the provisions of the Italian Civil Code shall apply.

## **13. Place of performance, place of jurisdiction, applicable law**

13.1 The place of performance is DATA MODUL's place of business in Italy.

13.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of Italy, Milano for the determination of any dispute arising out of or in connection with this GSC with an amount in dispute of up to EUR 100.000,00 (in words: one hundred thousand). Any and all disputes arising under or in connection with this GSC with an amount in dispute of more than EUR 100.000,00 (in words: one hundred thousand) shall be finally settled between the Parties according to the Rules of the Milan Arbitral Chamber without recourse to the ordinary courts of law. The place of arbitration shall be Milano. The arbitral tribunal shall consist of three (3) arbitrators. The language of the arbitral proceedings shall be Italian.

13.3 Italian law shall be applicable. The provisions of the UN Sales Convention are excluded.

As of

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Signature of Customer

In accordance with Art. 1341 and Art. 1342 of the Italian Civil Code the customer hereby accepts the General Sales Conditions and specifically approves the following Articles of the present General Sales Conditions:

2.2, 3.6, 3.7, 3.8, 3.9, 4.1, 4.4, 4.7, 7.2, 7.3, 7.4, 7.7, 8, 9.1, 9.2, 9.3, 9.4, 9.5, 13.1, 13.2, 13.3.

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Signature of Customer