

# DATA MODUL, INC.

## General Terms and Conditions of Purchase

### 1. ACCEPTANCE

These General Terms and Conditions of Purchase ("Terms") apply to all business relations with Data Modul, Inc.'s ("our," "us," or "Buyer") supply-side business partners ("Supplier"), including any purchase order ("Purchase Order") between us and Supplier concerning the purchase of goods ("Goods"). No communication between parties hereto shall be deemed to be part of these Terms or any Purchase Order, nor shall same have the effect of modifying or adding to these Terms or any Purchase Order, unless such communication is in writing and is signed by an authorized representative of the Buyer. THESE TERMS PREVAIL OVER ANY OF SUPPLIER'S TERMS AND CONDITIONS OF SALE REGARDLESS OF WHETHER OR WHEN SUPPLIER HAS ACCEPTED BUYER'S PURCHASE ORDER OR SUCH TERMS.

### 2. PERFORMANCE, PRICES, TITLE

- a Without our prior written consent, the performance owed by Supplier may not be performed by third parties (e.g. subcontractors). The Supplier shall bear the procurement risk for his services, unless otherwise agreed in individual cases.
- b The Supplier must notify us about changes in the type or composition of the processed material or in the constructive execution compared to earlier similar deliveries and performances prior to the start of production. Changes and corrections in the scope of performance and in the type of performance, in particular those requested by us for reasons of technical progress or safety aspects, shall be implemented by the Supplier without surcharge insofar as this can be reasonably expected of the Supplier and can be carried out without considerable additional costs.
- c Supplier shall notify Buyer immediately of any delays and of any actual or potential labor dispute which is delaying or threatens to delay timely performance of a Purchase Order. Such notice shall include all relevant information with respect to such dispute.
- d Prices, as specified in a Purchase Order, are not subject to increase unless specifically authorized by an amendment to this Purchase Order and, except as otherwise provided for in this Purchase Order.

- e The transfer of title to the Goods to Buyer shall take place unconditionally and regardless of the payment of the purchase price. If, however, Buyer accepts in writing an offer for transfer of ownership by the Supplier subject to the condition precedent that the purchase price is paid, the Supplier's retention of title shall lapse at the latest upon payment of the purchase price for the delivered Goods. In the ordinary course of business, Buyer shall remain authorized to resell the Goods even before payment of the purchase price. Thereby all other forms of retention of title, in particular any extended retention of title, a transferred retention of title, and a retention of title extended to further processing are hereby excluded.

### 3. DELIVERY TIME, DEFAULT

- a The delivery times or delivery dates stated by us in the order are binding. If neither delivery times nor delivery dates are specified in the order and have not been otherwise agreed upon, the delivery time shall be two (2) weeks from the conclusion of the contract. The Supplier is obliged to inform us immediately in writing if it is likely that he will not be able to meet the agreed delivery times or delivery dates, for whatever reason. Deliveries before expiry of the agreed delivery time or before the agreed delivery date are not permitted without our written consent.
- b If the Supplier is in default, Buyer may - in addition to further legal claims - demand a blanket compensation for the damage resulting from this default amounting to 1% of the net price per completed calendar week, but no more than a total of 5% of the net price of the Goods delivered late. Buyer reserves the right to prove that Buyer incurred a higher damage. The Supplier may prove that no damage at all or only considerably less damage has been incurred.

### 4. PACKING, SHIPPING, DELIVERY

- a All items must be suitably packed and prepared for shipments to secure lowest transportation rates and comply with carrier regulations. No charges will be paid by Buyer for packing, crating, or cartage unless stated in the Purchase Order.
- b A packing slip or delivery note stating the date (of issuance and shipping), contents of the delivery (article number and quantity) and our order reference (date

and number) must be enclosed with the delivery. If the packing slip or delivery note is missing or incomplete, Buyer is not responsible for any resulting delays in processing and payment. A corresponding dispatch note with the same contents shall be sent to us separately from the packing slip or delivery note.

- c All shipments shall be made DAP at the location specified on the Purchase Order in accordance with [Incoterms® 2020](#). Such location shall also be the place of performance for the delivery and any cure required hereunder.
- d The risk of destruction and deterioration of the Goods shall pass to Buyer upon delivery at the location specified in the Purchase Order, after acceptance has been agreed upon by Buyer, the aforementioned risk shall pass.
- e Deliveries shall be strictly in accordance with the schedule specified in the Purchase Order and in the exact quantity specified thereon. If Supplier fails to meet the delivery schedule Buyer may require Supplier to ship via expedited routing necessary to meet the schedule and to recover time lost. The difference between the expedited costs and routine routing costs shall be paid by Supplier.

## 5. ADVANCE, EXCESSIVE SHIPMENTS

- a Advance shipments, if retained, will be subject to payment conforming to delivery schedules specified on the Purchase Order. Materials shipped in excess of quantity ordered, if returned, will be returned at Supplier's expense.

## 6. WARRANTY, INSPECTION, REJECTION

- a The Supplier warrants for a period of three (3) years following transfer of risk or acceptance by the Buyer, as applicable, that the Goods to be furnished under any Purchase Order shall be free from defects in material and workmanship and shall conform to the requirements of such Purchase Order. If material is found defective, Buyer shall have the right to request that the affected Goods be corrected and Supplier agrees promptly to comply at its own cost and expense including transportation charges, if any. In the event Supplier does not comply, Buyer may affect correction itself, or by others, but at the cost and expense of the Supplier and/or may terminate this Purchase Order in accordance with Section 8 below, without liability. In lieu of the foregoing, Buyer may, in its discretion, elect to accept and retain the defective articles at a reduction in price, corresponding to the decreased value.
- b Buyer shall notify Supplier if any items delivered hereunder are rejected, and at the Buyer's election and Supplier's risk and expense, such items shall be held by Buyer or returned to Supplier. No replacement of [1726-132/3294814]

defective items shall be made by Supplier unless agreed to in writing by Buyer. Supplier's obligations shall also include the removal of the defective Goods and reinstallation of non-defective Goods insofar as the Goods have been installed in another item or attached to another item in accordance with their nature and intended use at Supplier's full cost and expense. The expenses necessary for the purpose of inspection and cure shall be borne by the Supplier even if it turns out that no defect actually existed. Our liability for damages in the event of an unjustified demand to remedy defects shall remain unaffected; in this respect, however, Buyer shall only be liable if Buyer has recognized or by gross negligence has failed to recognize that no defect existed.

- c The Supplier shall obtain and maintain, at all times, an appropriate product liability insurance. The Supplier shall provide us with a copy of the liability policy at any time upon request.
- d To the fullest extent permissible pursuant to applicable law, Supplier shall defend, indemnify, and hold Buyer harmless from and against damages and claims related to defective or damaged Goods delivered pursuant to a Purchase Order.
- e The Supplier shall have a right to declare set-off or retention only if the counterclaims are final and non-appealable or are uncontested.

## 7. CHANGES

- a Buyer reserves the right at any time to make changes in delivery schedules, drawings and specifications as to any articles, material and work covered by this Purchase Order. If such changes affect price or delivery schedules, Supplier shall notify Buyer immediately, in order that an equitable adjustment in price and/or time of delivery may be negotiated.

## 8. CANCELLATION (DEFAULT TERMINATION), RE-PROCUREMENT, INSOLVENCY

- a Buyer may by written notice of default to Supplier, terminate this Purchase Order or any part thereof if Supplier (1) fails to deliver the Goods, in accordance with the delivery schedules specified in the Purchase Order or any extension thereof, or (2) so fails to make progress as to endanger performance of the Purchase Order, or fails to comply with any of the other provisions of the Purchase Order and does not remedy such failures within a period of ten (10) days, or at such longer period as Buyer may authorize in writing after receipt of notice from Supplier, specifying such failure.
- b In the event of termination pursuant to this clause, Buyer may purchase the Goods elsewhere and the Supplier shall be liable, to the Buyer, for any excess cost of re-procurement to Buyer, and damages, if any,

suffered by Buyer provided, however, that the Supplier shall not be liable for such excess costs and damages, when the delay of Supplier in making deliveries is due to causes beyond the control and without the fault or negligence of the Supplier. No cause shall constitute a basis for excusable delay, unless Supplier has notified Buyer, in writing, of the existence of such cause within five (5) days from beginning thereof.

- c Buyer shall be entitled to revoke or terminate any Purchase Order, in whole or in part, with immediate effect, by reason of Supplier's default, if Supplier culpably ceases delivery, if, in Buyer's opinion, Supplier's financial situation deteriorates to such an extent that the delivery is at risk, or if an application for bankruptcy or insolvency proceedings has been made affecting Supplier.

## **9. TERMINATION FOR CONVENIENCE**

- a Buyer is entitled at any time and without immediate justification to demand from the Supplier the temporary suspension of partial or complete performance of any Purchase Order. Upon request, Buyer shall subsequently inform the Supplier of the reasons and the probable duration of the suspension.
- b In the event of a suspension of more than three (3) months, the Supplier shall be entitled to claim compensation for the actual costs incurred as a result of the delay, but not for loss of profit. For this compensation of costs, the Supplier shall state the costs resulting from the delay in detail.

## **10. MATERIALS, TOOLS AND EQUIPMENT**

- a Materials, tools, and equipment required to fill this Purchase Order shall be furnished by Supplier unless otherwise specified. Supplier represents that it now has or can readily procure without assistance of Buyer, all facilities necessary for the performance of this Purchase Order, except as otherwise provided herein. Any such materials, tools, equipment or facilities furnished to Supplier by or on behalf of Buyer on other than a charge basis and/or purchased by Buyer from Supplier, for use in connection with performance by Supplier herein under, shall be held by Supplier as Buyer's property, as applicable and shall not be used except for the purpose of Supplier's performance under this Purchase Order. Supplier shall account for all such property except for reasonable scrap losses authorized by Buyer.
- b All of said furnished and/or purchased materials, tools, equipment, and facilities so held by Supplier, shall be satisfactorily marked, segregated, or otherwise clearly identified by Supplier as the property of the Buyer and shall be kept by Supplier in good condition and repair and shall be returned by Supplier upon completion of order at Supplier's expense, in the [1726-132/3294814]

same condition as when received by Supplier, reasonable wear and tear excepted and except to the extent that any such materials, tools, equipment, and facilities has been incorporated in items furnished by Buyer pursuant to this Purchase Order or has been properly consumed in the normal performance of work there under.

- c All aforesaid furnished and/or purchased materials, tools, equipment, and facilities, while in Supplier's custody and/or control shall be held at Supplier's risk and shall be insured by Supplier at an amount equal to the replacement cost thereof and all such insurance coverage shall provide that payment on account of loss thereof and/or damage thereto shall be paid to Buyer.

## **11. IP INDEMNITY**

Except when the articles to be furnished hereunder are to be so produced from designs or processes furnished by Buyer, the Supplier warrants that no patents, designs, trademarks, copyrights or similar intellectual property rights (commercial property rights) of third parties in countries of the European Union, the USA, the People's Republic of China, the Republic of China (Taiwan) and other countries in which Supplier manufactures Goods or has the Goods manufactured are infringed by Goods supplied by Supplier. The same shall apply to any country to which the delivery is to be finally shipped if this country has been communicated to the Supplier prior to conclusion of the contract. The Supplier is obliged to indemnify Buyer against all claims, suits, actions, and/or losses brought against Buyer by third parties or sustained by Buyer due to the alleged infringement of any commercial or other property rights and to reimburse Buyer for all necessary expenses, costs, and attorneys' fees in connection with such claims. Supplier covenants that it will at its own expense defend every claim and suit which shall be brought against Buyer or against those selling or using Buyer's product for any alleged infringement of any patent by reason of the sale or use of any of said Goods. Supplier agrees that it will pay all such judgments and costs awarded in connection with any said claim and suit, and will also reimburse Buyer for any costs or expenses incurred by it in the defense of any said claims and suits.

## **12. DUPLICATION AND USE OF DESIGNS, PATENTS AND REPRODUCTIONS**

No Goods furnished hereunder or tools, plans, drawings, and specifications for producing the same, which have been specially designed for or by Buyer shall be duplicated for others, without the prior written consent of Buyer. All of said plans, drawings, designs, specifications, documents, customer lists, statements of technical or financial data and any papers of any kind delivered to Supplier by Buyer (all of which items are hereinafter, in the aggregate, called "Written

Data”), shall be held in confidence and shall be used by Supplier only for such purpose or purposes and only to such extent as is necessary to permit Supplier to perform Supplier’s obligations to Buyer hereunder and additionally:

- a All “Written Data” shall be returned to Buyer forthwith at such time as the Goods purchased by Buyer hereunder have been delivered to Buyer or required by the provisions hereof to be so delivered or at such time as Supplier’s performance hereunder has been accepted or rejected or at such time as this Purchase Order is otherwise terminated, whichever time shall first occur, unless, prior to said time, Supplier is in receipt of Buyer’s written consent to the contrary.
- b From and after the time set forth in Section 12(a), Supplier shall not make or permit others to make any further use of any of the “Written Data” unless prior to said time, Supplier is in receipt of Buyer’s written consent to the contrary; and
- c Supplier shall not take or permit others to take any action which violates or divests Buyer or others of lawful rights in and to any trade secrets or other proprietary Written Data which have been disclosed to Supplier in connection with, or by reason of, the transaction evidenced by this Purchase Order.

### **13. ASSIGNMENTS**

No assignment of a Purchase Order or any of the monies due or to become due thereunder, shall be binding upon Buyer unless Buyer’s written consent to said assignment has been obtained.

### **14. REMEDIES**

The remedies herein reserved unto the Buyer shall be cumulative and additional to any other remedies in law or equity. No waiver of a breach of any provision of this Purchase Order shall constitute a waiver of any other breach or of such provision.

### **15. WARRANTY PRICE**

Supplier warrants that the prices set forth herein do not exceed those charged by Supplier to any other customer purchasing the same items in like or similar quantities under the same circumstances.

### **16. RIGHT TO SUSPEND OR STOP WORK**

Buyer reserves the right to suspend or stop the work, hereunder, in whole or in part by written notice to the Supplier for a period not to exceed ninety (90) days. In either such event, Supplier shall take all reasonable steps to minimize the incurrence of costs allocable to the work affected. Should such work stoppage or suspension, cause an increase in cost or time required for performance, an equitable adjustment in price or [1726-132/3294814]

in time of performance or both, shall be made in accordance with Section 7 above, provided Supplier furnishes Buyer with written explanatory statements of interim costs incurred upon Buyer’s request therefore.

### **17. NO LIABILITY FOR EXCESSIVE MATERIAL, LABOR OR PRODUCTION COSTS**

In order to minimize liability in case changes pursuant to Section 7 are directed or Termination for Convenience pursuant to Section 9 occurs, Supplier agrees that Buyer will not be responsible for material, labor, or production costs or charges that are unrealistic, excessive, or inconsistent with the minimum needs required to meet delivery requirements of the applicable Purchase Order.

### **18. PAYMENTS**

- a The price stated in the Purchase Order transmitted by Buyer is binding, exclusive of applicable taxes.
- b Buyer will pay within 14 calendar days of complete delivery, performance, inspection, acceptance, and Buyer’s receipt of a proper invoice with 2% discount or, alternatively, the net, undiscounted price within 30 calendar days. In case of bank transfers, payment shall be deemed to have been made in due time if our transfer order is received by our bank before expiry of the payment period. The invoice is deemed to be proper if it contains the exact order data and is transmitted in duplicate, clearly marked. Supplier shall not permitted combine several orders in one invoice.

### **19. RIGHT TO DEMAND RETURN OF INTERIM PAYMENTS**

Should Buyer, prior to full performance and completion of a Purchase Order, make any payment thereunder for any cause or reason, whether conditionally or unconditionally, any amount or amount so paid, shall be subject to return with interest, at the option of the Buyer, if this contract is ultimately terminated for default or otherwise not fully performed and completed by Supplier in accordance with the terms and provisions hereof.

### **20. GOVERNING LAW; DISPUTES**

The laws of the state of New York shall govern the construction and enforceability of these Terms and any Purchase Order, without regard to its conflict of laws principles. The parties agree that any action arising under or relating to same or the Goods shall lie within the exclusive jurisdiction of any State or Federal court located in the County of Suffolk, State of New York. Each party consents to the exercise of jurisdiction by any State or Federal court located in the County of Suffolk, State of New York and agrees that process may be served on such party in any such action by mailing it to such party at the address set forth

below. If either party is compelled to seek judicial enforcement of its rights hereunder, the prevailing party in any such action shall be entitled to seek recovery of its costs incurred in such action, including reasonable attorneys' fees.

## 21. NOTICES

All notices, statements and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed by registered or certified mail, to the addresses designated herein or to such other addresses designated by notice similarly given:

If to Buyer to: Address appearing on face of the applicable Purchase Order.

If to Supplier to: Address appearing under Supplier's name on the face of the applicable Purchase Order

## 22. ANTI-CORRUPTION

In connection with all business transactions with Buyer:

- a Supplier and its suppliers shall comply fully, at all times, with applicable national and international anti-bribery rules, including the U.S. Foreign Corrupt Practices Act (FCPA), the UK Bribery Act of 2010, and European Union, Organization for Economic Cooperation and Development (OECD) and Council of Europe anti-bribery rules.
- b Supplier shall not directly or indirectly solicit, receive or offer any form of bribe, kickback or other corrupt payment or thing of value to or from any person or organization, including government agencies or officials, companies, or personnel of those companies.
- c Supplier and its affiliates shall at all times keep complete and accurate books and records, and all records and information that the Supplier provides to Buyer pertaining to a Purchase Order shall be complete and accurate.

## 23. CONFIDENTIALITY

- a Any confidential, proprietary or non-public information, including drawings, descriptions, specifications and any other Intellectual Property made available to Supplier or created for Buyer related to a Purchase Order ("Confidential Information") is the property of Buyer.
- b Supplier and its representatives shall protect Buyer's Confidential Information, and shall not disclose, copy, reproduce, reverse engineer or transfer Confidential Information to any third parties or use for purposes other than fulfilling its obligations under the applicable Purchase Order.

## 24. INTELLECTUAL PROPERTY

- a "Intellectual Property" includes any patent, trademark, trade secret, copyright design, know-how, or other proprietary right.
- b Buyer retains all right, title, and interest in and to its Intellectual Property related to any Purchase Order. Any license of Buyer's Intellectual Property is granted solely for the limited right to permit Supplier to perform its obligations under a Purchase Order for the sole benefit of Buyer.
- c Supplier retains its Intellectual Property that existed before the applicable Purchase Order. Supplier grants Buyer a worldwide, nonexclusive, royalty free, irrevocable, perpetual license under its Intellectual Property to use, sell, repair, and reconstruct the Goods and copy, distribute and create derivative works of copyrightable work product and deliverables.
- d Supplier hereby assigns Buyer all right, title, and interest in and to all Intellectual Property in Goods created for Buyer pursuant to the Order. Ownership and the rights to all designs, drawings, calculations, specifications, software and other documents created for Buyer by the Supplier shall pass to Buyer irrespective of form. The Supplier undertakes to ensure that all copyrights and ancillary copyrights in such documents are transferred to Buyer. Insofar as a transfer is not legally possible, the Supplier hereby grants Buyer the exclusive and spatially, temporally and content-wise unlimited right of use to the aforementioned rights.
- e Supplier shall promptly disclose all Intellectual Property owned by Buyer pursuant to Section 24(d) including all inventions and shall execute any documents necessary to perfect Buyer's ownership thereof.

## 25. SUPPLIER ETHICS

The Supplier shall at all times observe all laws, regulations, rules and ordinances (in particular with regard to fair working conditions, equal opportunities and compliance with environmental and environmental protection requirements) that apply to Supplier. The Supplier shall ensure that the Goods delivered by it meet all relevant requirements for placing on the market in the United States, European Union, and the European Economic Area. Upon request, he shall provide us with evidence of conformity by submitting suitable documents. The Supplier shall make reasonable efforts to ensure that its subcontractors comply with the obligations contained in this Section 25 that apply to the Supplier.