

## DATA MODUL LTD STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS

### 1. DEFINITIONS AND INTERPRETATION

In these standard terms and conditions:

1.1 the following words and expressions shall have the following meanings unless the context otherwise requires:

"Business Day" a day other than a Saturday or Sunday or a day which is a public or bank holiday in England and/or Wales

"Customer" The party placing Orders with DATA MODUL

"Confidential Information" all information in respect of the business of either party including know-how and other matters connected with the Goods, information concerning either party's relationships with actual or potential clients, customers or suppliers and the needs and requirements of either party and of such persons and any other information which, if disclosed, will be liable to cause harm to the party to whom the information relates

"Contract" the contract between the Customer and DATA MODUL for the sale and purchase of the Goods formed in accordance with Condition 2

"Force Majeure Event" an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy resources

"Goods" any goods which DATA MODUL supplies to the Customer (including any of them or any part of them) under a Contract

"Insolvent" a party is Insolvent where it:

(a) proposes or passes a resolution for its winding up or in the case of a limited liability partnership proposes or determines that it will be wound up;

(b) is subject to an application to or order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off;

(c) enters administration or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person filed at any court;

(d) proposes, makes or is subject to, a company voluntary arrangement or a composition with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement under Part 26 Companies Act 2006;

(e) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income;

(f) ceases to trade or appears, in the reasonable opinion of the Customer, to be likely to cease to trade;

(g) is unable to pay its debts within the meaning of section 123 Insolvency Act 1986;

(h) has any distraint, execution or other process levied or enforced on any of its property which is not paid out, settled or discharged within five (5)

Business Days; or

(i) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction

"Intellectual Property Rights" all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions

"Order" any purchase order of the Customer for the Goods which shall be deemed to incorporate these Terms and Conditions

"Price" the price set out in DATA MODUL's quotation

"Terms and Conditions" these standard terms and conditions of purchase [together with any special terms agreed in writing between DATA MODUL and the Customer as specified on the front of the Order]

### 2. FORMATION AND INCORPORATION

2.1 Subject to any variation under Condition 2.3, the Customer may purchase from DATA MODUL and DATA MODUL shall supply to the Customer the Goods upon the Terms and Conditions to the exclusion of all other terms and conditions and all previous oral or written representations, including any terms and conditions which the Customer purports to apply under any Order, acknowledgement of Order confirmation, confirmation of delivery or similar document, whether or not such document is referred to in the Contract. Nothing in this Condition 2.1 shall exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

2.2 Each Order or acceptance of a quotation for Goods will be deemed to be an offer by the Customer to purchase Goods upon these Terms and Conditions. Quotations for Goods issued by DATA MODUL will not be binding upon DATA MODUL. The Contract is formed between DATA MODUL and the Customer when the Order is accepted by DATA MODUL by way of written confirmation of the Order. No contract will come into existence until a written acknowledgement of that Order is issued by DATA MODUL. The dispatch of an invoice as well as delivery of Goods by DATA MODUL shall be equivalent to the confirmation of an Order.

2.3 Save as otherwise expressly provided in the Contract, no variation to the Terms and Conditions shall be effective unless it is in writing and signed by a duly authorised representative on behalf of each party.

### 3. SUPPLY OF THE GOODS

3.1 DATA MODUL warrants that on delivery and for a period of twelve (12) months from the date of delivery (the "Warranty Period") the Goods shall:

3.1.1 conform in all material respects with their description and any applicable Specification;

3.1.2 be free from material defects in design, material and workmanship;

3.1.3 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

3.1.4 be fit for any purpose made known to it prior to acceptance of the relevant Order by DATA MODUL by the Customer.

3.2 Subject to Condition 3.3, if:

3.2.1 the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Condition 3.1;

3.2.2 DATA MODUL is given a reasonable opportunity of examining such Goods; and

3.2.3 the Customer, if requested to do so by DATA MODUL, returns such Goods to DATA MODUL's place of business,

DATA MODUL shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

3.3 DATA MODUL shall not be liable for the Goods' failure to comply with the warranty in Condition 3.1 if:

3.3.1 the Customer makes any further use of such Goods after giving notice in accordance with Condition 3.2;

3.3.2 the defect arises because the Customer failed to follow DATA MODUL's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

3.3.3 the defect arises as a result of DATA MODUL following any drawing, design or specification supplied by the Customer;

3.3.4 the Customer alters or repairs such Goods without the written consent of DATA MODUL; or

3.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions.

3.4 Except as provided in this Condition 3, DATA MODUL shall have no liability to the Customer in respect of Goods failure to comply with the warranty in Condition 3.1.

3.5 The terms of this Condition 3 shall apply to any repaired or replacement Goods supplied by DATA MODUL under Condition 3.2.

3.6 All warranties, conditions and other terms implied by statute or common law are, unless expressly included under these Terms and Conditions, excluded from these Terms and Conditions to the fullest extent permitted by law.

### 4. PRICE

4.1 The Customer shall pay the Price for the Goods and, unless otherwise stated, this shall be exclusive of:

4.1.1 all costs and charges of packaging, insurance, carriage and delivery costs; and

4.1.2 and any duties, imposts, levies, taxes and VAT which shall be added to the sum in question at the rate and in the manner prescribed by law.

### 5. PAYMENT

5.1 DATA MODUL may invoice the Customer for the Goods in accordance with the payment dates referred to in the Terms and Conditions or as otherwise agreed in any Order, or if no specific dates have been referred to or agreed, on or at the any time after the time of delivery of the Goods.

5.2 The Customer shall pay the Price to DATA MODUL for the Goods within two weeks of receiving a valid invoice from DATA MODUL in Pounds Sterling.

5.3 Invoices issued by DATA MODUL shall:

5.3.1 be valid tax invoices for the purposes of VAT legislation;

5.3.2 identify DATA MODUL and quote any reference number that may be quoted by the Customer to DATA MODUL;

5.3.3 specify the Goods to which the invoice relates; and

5.3.4 be sent to the Customer at the address notified to DATA MODUL from time to time.

5.4 If any sum payable under a Contract is not paid when due then the party entitled to payment may claim interest from the due date until payment is made in full both before and after any judgement, at 8 percent per annum over the European Central Bank base borrowing rate from time to time. The parties agree that this Condition 5.4 is a substantial remedy for late payment of any sum payable under a Contract in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

5.5 DATA MODUL shall be entitled to set-off any liability which the Customer has to it against any liability which it has to the Customer, whether such liability is present or future, liquidated or unliquidated, under the Contract or any other contract between the parties or other cause of action and irrespective of the currency of its denomination.

## **6. INSTALMENTS**

6.1 DATA MODUL may deliver the Goods by separate instalments in stages and invoice the Price for an instalment separately.

## **7. DELIVERY**

7.1 The Goods will be delivered ex works Incoterms 2000.

7.2 The Customer shall load the Goods at its own risk. In the event the Customer will be in delay of collecting the Goods DATA MODUL shall be entitled to store the Goods at Customer's sole costs.

7.3 DATA MODUL will ensure that:

7.3.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and DATA MODUL reference numbers, the type and quantity of the Goods, special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

7.3.2 if DATA MODUL requires the Customer to return any packaging material to DATA MODUL, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times that DATA MODUL shall reasonably request.

## **8. RISK / OWNERSHIP**

8.1 The risk in the Goods shall pass to the Customer on completion of delivery.

8.2 Title to the Goods shall not pass to the Customer until the Customer has made payment in full (cash or cleared funds) for:

8.2.1 the Goods; and

8.2.2 any other Goods that DATA MODUL has supplied to the Customer in respect of which payment has become due.

8.3 Until title to the Goods has passed to the Customer, the Customer shall:

8.3.1 hold the Goods on a fiduciary basis as DATA MODUL's bailee;

8.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as DATA MODUL's property;

8.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

8.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on DATA MODUL's behalf from the date of delivery;

8.3.5 give DATA MODUL such information relating to the Goods as DATA MODUL may require from time to time;

8.3.6 notify DATA MODUL if it becomes Insolvent.

but the Customer may resell or use the Goods in the ordinary course of its business.

8.4 If before title to the Goods passes to the Customer the Customer becomes Insolvent, or DATA MODUL reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy DATA MODUL may have, DATA MODUL may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **9. LIABILITY**

9.1 Nothing in this contract shall operate to exclude or restrict one party's liability (if any) to the other:

9.1.1 for death or personal injury caused by its negligence or by a person for whom it is vicariously liable;

9.1.2 for its fraud or fraudulent misrepresentation or the fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;

9.1.3 for breach of its obligations arising under Section 12 of the Sale of Goods Act 1979;

9.1.4 for breach of its obligations arising under Section 2 of the Sale of Goods and Services Act 1982;

9.1.5 for breach of its obligations arising under Section 8 of the Supply of Goods (Implied Terms) Act 1973;

9.1.6 arising under Section 2(3) of the Consumer Protection Act 1987;

9.1.7 for a deliberate, personal repudiatory breach of this Contract by that party; or

9.1.8 for any matter for which it is not permitted by law to exclude or limit, or attempt to exclude or limit its liability.

9.2 Subject to Condition 9.1, DATA MODUL shall have no liability to the Customer (including under any indemnity and whether arising from breach of contract, negligence or otherwise) for any:

9.2.1 loss of profit (direct or indirect);

9.2.2 loss of revenue, loss of production or loss of business (in each case whether direct or indirect);

9.2.3 loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct or indirect);

9.2.4 loss of anticipated savings or loss of margin (in each case whether direct or indirect);

9.2.5 indirect, consequential or special loss.

9.3 Subject to Conditions 9.1 and 9.2, DATA MODUL's maximum aggregate liability per event or series of connected events for all Defaults caused hereunder shall be limited to the value of the relevant Order to which the Default relates.

9.4 For the purposes of Condition 9.3, "Default" shall mean a breach by DATA MODUL of, a failure to perform or defect or delay in performance of any of its obligations under this contract or any other duty (whether in contract, tort (including, without limitation, negligence), misrepresentation, under any statute or otherwise) which arises in connection with this Contract.

## **10. INTELLECTUAL PROPERTY**

10.1 All Intellectual Property Rights in or arising out of or in connection with the Goods shall be owned by DATA MODUL. 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.

10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods, the Customer's use of any such Intellectual Property Rights is conditional on DATA MODUL obtaining a written license from the relevant licensor on such terms as will entitle DATA MODUL to license such rights to the Customer. 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 of or in connection with any third party infringement of such custom made changes.

## **11. TERMINATION**

11.1 If the Customer:

11.1.1 commits a material breach of the Contract which cannot be remedied; or

11.1.2 commits a material breach of the Contract which can be remedied but fails to remedy that breach within thirty (30) days of a written notice setting out the breach and requiring it to be remedied being given by the non-breaching party,

then DATA MODUL may terminate the Contract immediately by giving written notice to that effect to the party in breach.

11.2 Either party may terminate the Contract immediately by giving written notice to that effect to the other party if the other party becomes Insolvent.

11.3 Following expiry or termination of the Contract:

11.3.1 Conditions 2, 5, 8, 9, 10, 11, 12, 13 14, 15 and 16 shall continue in force, together with any other Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract;

11.3.2 the parties shall return any Confidential Information belonging to the other party to that party; and

11.3.3 all other rights and obligations shall immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.

## **12. FORCE MAJEURE**

12.1 Neither party shall have any liability or responsibility for failure to fulfil any obligation under this Contract so long as and to the extent to which the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a result of a Force Majeure Event.

12.2 If a Force Majeure Event which gives rise to relief from liability under Condition 12.1 continues for a period of more than three (3) months, either party shall be entitled to terminate this Contract immediately by written notice to that effect to the other party.

## **13. CONFIDENTIALITY**

- 13.1 Each party will keep confidential any and all Confidential Information that it may acquire from the other party.
- 13.2 Neither party will use the Confidential Information of the other party for any purpose other than to perform its obligations under the Contract. The Customer will ensure that its officers and employees comply with the provisions of this Condition 13.
- 13.3 The obligations on the parties set out in Conditions 13.1 and 13.2 will not apply to any information which:
- 13.3.1 is publicly available or becomes publicly available through no act or omission of the receiving party; or
- 13.3.2 the receiving party is required to disclose by order of a court or regulatory body of competent jurisdiction.
- 14. GENERAL**
- 14.1 Time shall be of the essence in respect of all timescales for payment by the Customer. Time shall not be of the essence in respect of any obligation with which DATA MODUL is required to comply under the Contract.
- 14.2 DATA MODUL's rights and remedies set out in the Terms and Conditions are in addition to and not exclusive of any rights and remedies provided by law.
- 14.3 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term shall be deemed to be severed from the Contract and this shall not affect the remainder of the Contract which shall continue in full force and effect.
- 14.4 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract shall not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor shall the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default shall only be valid in the circumstances and for the purpose for which it was given and shall not constitute a waiver of any other right, remedy, breach or default.
- 14.5 The Customer shall not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under the Contract or to sub-contract any of its obligations under the Contract.
- 14.6 DATA MODUL shall be entitled to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under the Contract and to sub-contract any of its obligations under the Contract.
- 14.7 The parties do not intend that any term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.
- 14.8 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
- 14.8.1 neither party has entered into the Contract in reliance upon, and it shall have no remedy in respect of, any representation or statement which is not expressly set out in the Contract;
- 14.8.2 the only remedies available for breach of any representation or statement which was made prior to entry into the Contract and which is set out in the Contract shall be for breach of contract; and
- 14.8.3 nothing in this Condition 14.8 shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.
- 15. NOTICE**
- 15.1 Subject to Condition 15.4 any notice or other communication given under or in connection with the Contract shall be in writing, in the English language and:
- 15.1.1 delivered by hand;
- 15.1.2 sent by pre-paid first class post/recorded delivery/airmail post;
- 15.1.3 sent by facsimile or;
- 15.1.4 sent by email.
- to DATA MODUL and to the Customer at the address detailed in any Order or other document received by DATA MODUL from the Customer.
- 15.2 Any notice or communication given in accordance with Condition 15.1 shall be deemed to have been served:
- 15.2.1 if delivered by hand, at the time of delivery;
- 15.2.2 if sent by pre-paid first class post/recorded delivery/airmail post at 9.00 a.m. on the second Business Day after the date of posting;
- 15.2.3 if sent by facsimile at the time of confirmation of completion of transmission by way of a transmission report;
- 15.2.4 if sent by email, within 24 hours after sending the email;
- provided that if a notice or communication is deemed to be served before 9.00am on a Business Day it shall be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it shall be deemed to be served at 9.00am on the immediately following Business Day.
- 15.3 To prove service of a notice or communication it shall be sufficient to prove that the provisions of Condition 15.1 were complied with.
- 15.4 This Condition 15 shall not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.
- 16. GOVERNING LAW AND JURISDICTION**
- 16.1 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by English law.
- 16.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the determination of any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations) save that any party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.