

## DATA MODUL, INC. TERMS AND CONDITIONS OF SALE

All references in this document to "Seller" shall mean Data Modul, Inc., a New York corporation. All references to "Buyer" shall include all parent(s), subsidiaries and affiliates of the entity placing the order. Buyer and Seller may be referred to individually as a "Party" and collectively as the "Parties."

**1. AGREEMENT OF SALE:** (a) Prices are based on written quotes submitted by an authorized representative of the Seller. A quote is not an offer but an invitation to Buyer to tender an offer at the quoted price. Seller may choose its production sites at discretion. Orders are accepted by Seller upon written acknowledgment by an authorized representative of Seller which is conditioned on Buyer's agreement to all of these Terms and Conditions and the waiver by Buyer of any terms and conditions contained in any other document or communication of Buyer, whether previously or hereafter delivered to Seller, to which Seller hereby objects. Delivery of Products or services by Seller and invoicing Buyer therefore shall also constitute acceptance of an order. (b) Acceptance by Seller of any order placed for Seller's products (the "Products") whether submitted by telephone or on Buyer's purchase order form, shall be subject to these Terms and Conditions of Sale and is conditioned upon the Buyer's acceptance of these Terms and Conditions of Sale which shall apply to all future orders placed by Buyer with Seller unless specifically agreed to in writing by an authorized representative of Seller referencing these Terms and Conditions. Any terms or conditions appearing on the Buyer's purchase order or other form used by Buyer which are inconsistent with the terms and conditions hereof, shall not be binding on the Seller and shall not be considered applicable to the sales or shipment of the Products. This Sales Contract shall be deemed notification of and objection to such inconsistent, additional and/or different terms and a rejection thereof. Receiving possession by Buyer or Buyer's agent of the Products will constitute Buyer's acceptance of these Terms and Conditions, although Buyer's indication of acceptance is not limited to the foregoing method.

**2. TAXES:** Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority on, or measured by, the transaction between the Seller and the Buyer by reason of sale or use of the Products shall be paid by the Buyer in addition to the prices quoted or invoiced and will be added to the selling price (unless, at the time the order is submitted, an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge is provided to Seller) and Buyer agrees to pay and save Seller harmless from all such taxes or duties payable by Buyer to any governmental unit, including penalties and interest. In the event Seller is required to pay such tax, fee or charge, Buyer shall reimburse Seller therefore.

**3. OVERRUN OR UNDERRUN:** Deliveries shall be conforming if they do not vary by more than 10% from the quantity specified.

**4. RISK OF LOSS:** Delivery of Products hereunder is **F.O.B.** shipping points (Incoterms in their currently valid version). Risk of loss or damage shall pass to Buyer upon delivery of the Products to a carrier or picked up at the Seller's facility by or on behalf of Buyer, as the case may be.

**5. PRICES:** All prices for Products are quoted and payable in United States currency, unless otherwise agreed by Seller in writing. All prices are exclusive of transport, packing and all taxes or duties of any kind or nature, all of which shall be paid by Buyer. Seller reserves the right to vary prices without notice to Buyer and the price payable shall be the price in effect on the date of delivery.

**6. SHIPMENTS AND PAYMENTS:** Delivery dates for any Products are approximate, are done for the convenience of the Buyer, and shall not be binding upon the Seller or considered material to these terms and Conditions. All deliveries are ex works of the Seller. Shipments and deliveries shall at all times be subject to the approval of Seller's Credit Department and at any time Seller may require payment in advance or satisfactory security or guarantee that invoices will be promptly paid when due. All payments shall be due and payable in full **F.O.B.** New York (Incoterms in their currently valid version), without setoff or deduction, no later than thirty (30) days net upon receipt of the invoice unless otherwise agreed in writing by Seller. If Buyer fails to comply with any terms of payment, Seller, in addition to its other rights and remedies, but not in limitation thereof, reserves the right to withhold further deliveries or terminate this Sales Contract and any unpaid amount thereon shall become due immediately together with a service charge of one and one-half percent (1 1/2%) per month and reasonable attorneys' fees. When Buyer gives shipping instructions for a specific date, the Products must be accepted when tendered on or after said date, failing which Buyer will be subject to storage charges in addition to Seller's other remedies.

**7. TITLE:** Title to the Products sold hereunder shall pass to Buyer upon delivery to the carrier by Seller. However, Buyer hereby agrees that Seller shall retain a purchase money security interest in all Products sold to Buyer pursuant to this Sales Contract and hereby grants Seller such a security interest. For this purpose, this Sales Contract shall also be deemed to be a security agreement pursuant to the provisions of the Uniform Commercial Code. Seller shall retain such security interest to all Products now or hereafter acquired by Buyer and to any proceeds from the disposition of such Products which shall act as collateral until the purchase price and other charges for the Products shall have been paid in full. Buyer agrees to execute and deliver to Seller any financing or other documents as Seller may request in order to protect Seller's security interest and, in jurisdictions where permissible, hereby authorizes Seller to sign Buyer's name to and file appropriate financing statements. Upon any default by Buyer hereunder, Seller shall have all rights and remedies of a secured party under the Uniform Commercial Code, which rights and remedies shall be cumulative.

**8. INSPECTION; ACCEPTANCE AND RETURN OF PRODUCTS:** Buyer shall have thirty (30) days from the date of delivery of the Products to inspect the Products to determine whether the Products: (a) conform to its order or (b) are damaged, visibly defective or otherwise non-conforming. Buyer must assert any claim for the foregoing within such thirty (30) day period by

furnishing Seller with detailed written information of such damage, nonconformance, defect or shortage. In the event inspection and notice of rejection are not made within such thirty (30) day period, Buyer shall be deemed to have accepted the Products. No returns can be made without the prior written authorization of Seller. All returns are subject to inspection and acceptance by Seller. When returns are accepted, they are subject to a handling and re-inspection charge to be determined by Seller. All returns shall be in accordance with Seller's specific shipping instructions.

**9. SPECIAL TOOLING:** All special tooling required to produce the Products shall remain the property of the Seller unless specific arrangements are made to the contrary. Buyer is responsible for costs resulting from (a) alterations requested by Buyer (b) major repairs or replacement caused by normal wear and (c) additional costs incurred when new factors are introduced such as shorter lead time and/or increased delivery volumes. The term "Special Tooling" shall include such items as molds, dies, forms, jigs, mandrels and other special equipment which is required to produce the Products.

**10. INTELLECTUAL PROPERTY RIGHTS:** (a) DATA MODUL reserves ownership rights and copyrights to any and all of DATA MODUL's intellectual property rights, illustrations, drawings, calculations, films, templates, slides, repros, blueprints and other materials; such materials may not be made available to third parties or be exploited by the customer for his own purpose or those of a third party without the written consent of DATA MODUL. Otherwise, DATA MODUL shall be entitled to claim compensation for damages without prejudice to other rights. (b) 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. Should the Products furnished by Seller be of such a nature that the design therefore is supplied by Buyer, or should the Products be labeled or marked with a trademark or trade name requested by Buyer, the Buyer agrees to defend Seller in any action, either civil or criminal, brought against Seller by any third party for the infringement or misuse of any patents, trademarks or proprietary information, and Buyer further agrees to indemnify and hold Seller harmless from any damage or loss resulting therefrom, including reasonable attorneys' fees incurred by Seller in investigation or defense of any such claim. (c) As to any Product manufactured according to a design or specification not furnished by Buyer, Seller shall indemnify and save harmless Buyer from any claim that any use or resale of the same in and of itself infringes any U.S. patent or patent right if the Buyer, within thirty (30) days notifies Seller in writing of any such claim and gives Seller authority, information and assistance to dispose of such claim and to defend any suit that may be brought against Buyer thereon. In that event Seller will, at its expense, defend any such suit and satisfy any judgment therein to an amount not exceeding the price paid to Seller for said Products held to infringe. If, in any such suit, an injunction is issued against the further use of said item or any part thereof Seller will, at its option, either procure for the Buyer the right to continue using said items, or replace the items with non-infringing Products, or modify them so that they become non-infringing, or remove said Products and refund the purchase price and transportation costs thereof. Seller shall not be liable in any respect except as aforesaid including, without limitation, for any claim of infringement settled by Buyer without Seller's consent. The foregoing expresses all of Seller's obligations and liabilities as to patents, trademarks and proprietary information. Unless otherwise agreed in writing, all patents and other industrial property rights which accrue out of or in connection with the custom made 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.

**11. FORCE MAJEURE:** Seller shall not be liable for any delay or default in performance of orders, or in the delivery of the Products, or for any failure of such performance or delivery, or for any damages suffered by Buyer by reason thereof, when such delay, default or failure is, directly or indirectly, caused by or in any manner arises from any emergency, cause, condition, contingency or other event affecting, or beyond the reasonable control of Seller including, without limitation, strikes, lockouts, slowdowns, boycotts, picketing, riots, civil commotion, sabotage, acts of war, embargoes, carrier shortage, material shortage, utilities, prohibition or restrictions against manufacture, sale and shipment of the Products, imposed by any federal, state or municipal authority, applicable and enforceable orders of any domestic or foreign state or nation, or municipal subdivision thereof, fires, accidents, floods, and any and all other acts of God. In the event of delay due to any such contingency, the time for performance by Seller shall be extended for a period equal to the time lost by reason of the delay. If, due to any such contingency, Seller is unable to supply the total demand for any Products specified in this Sales Contract, Seller shall have the right to allocate its available supply thereof among its present and future customers and its departments, divisions and affiliated companies, on such basis as Seller may deem fair and equitable, without liability for any failure to perform this Sales Contract.

**12. WARRANTIES AND DISCLAIMER:** Seller warrants, only to Buyer, the Products will be in conformance with (a) the description and Seller's specifications for Products offered by it or (b) Buyer's specifications for the Products if provided by Buyer, and be free from manufacturing and material defect occurring under normal use for a period of one year after delivery. **THE FOREGOING WARRANTY IS EXCLUSIVE AND EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Seller's warranties made in connection with its sale of Products shall not be effective if Seller has determined, in its sole discretion, that Buyer has misused the Products in any manner, has failed to use the Products in accordance with industry standards and practices or has failed to use the Products in accordance with instructions, if any, furnished by Seller. Final determination of the suitability of the Products for the use contemplated by Buyer is the sole responsibility of Buyer, and Seller shall in no way be responsible for the suitability of the Products for any particular end use. **BUYER'S SOLE AND EXCLUSIVE REMEDY, AND SELLER'S SOLE OBLIGATION UNDER THIS WARRANTY, SHALL BE REPLACEMENT OF THE DEFECTIVE PRODUCTS OR REFUND OF THE PURCHASE PRICE THEREOF, AS DETERMINED AT SELLER'S SOLE OPTION.**

**13. LIMITATION OF LIABILITY: IT IS UNDERSTOOD THAT UPON REFUND OF THE PURCHASE PRICE OR REPLACEMENT, SELLER SHALL HAVE NO FURTHER OBLIGATION TO BUYER WITH RESPECT TO THE PRODUCTS. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR SPECIAL,**

**INCIDENTAL OR CONSEQUENTIAL DAMAGES OR OTHER DAMAGES, LOSSES, OR EXPENSES IN CONNECTION WITH, OR BY REASON OF THE INABILITY TO USE THE PRODUCTS FOR ANY PURPOSE, OR FOR DAMAGES AND/OR INJURIES INCURRED BY BUYER, ITS AGENTS AND EMPLOYEES, BY VIRTUE OF DEFECTS IN THE PRODUCTS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.** Any action against Seller for breach of warranty or contract, negligence or other alleged liability arising out of this Sales Contract must be commenced within one year after such cause of action accrues, and must otherwise conform to the requirement of these Terms and Conditions of Sale.

**14. ENTIRE AGREEMENT; WAIVERS, ETC.:** (a) This Sales Contract shall inure to the benefit of Seller's successors and assigns and shall be binding upon Buyer's successors and assigns. (b) This Sales Contract shall be governed by and construed in accordance with, and any disputes resolved utilizing, the laws of the State of New York. Whenever possible, each of the terms and conditions of this Sales Contract is to be interpreted in such manner as to be effective and valid under applicable law, but if any such term or condition is prohibited or invalid under such law, such term and condition is to be ineffective only to the extent of such prohibition and invalidity, without invalidating the remainder of such term or condition or the remaining terms and conditions hereof. (c) These Terms and Conditions of Sale together with any other terms and conditions set forth in this Sales Contract constitute the entire agreement between the parties governing the purchase and sale of the Products and supersede all prior and contemporaneous discussions and agreements between the parties concerning the Products. There are no promises, covenants, representations or agreements, oral or written, other than as expressly set forth herein. (d) This Sales Contract may not be modified, amended, changed or terminated, and no term or condition hereof may be waived, unless such waiver, modification, amendment, change or termination is express, in writing and signed by duly authorized employees of Seller and Buyer. No delay or omission by Seller in exercising any right or remedy shall be a waiver thereof or of any other right or remedy, and no single or partial waiver thereof shall preclude any other right or remedy. No waiver of any term or condition, or breach thereof, in any instance, shall be deemed a waiver of such term or condition hereof or any subsequent breach thereof. All rights or remedies of Seller hereunder are cumulative. **NO SALESMEN OR MANUFACTURERS' REPRESENTATIVE IS AUTHORIZED TO BIND SELLER TO ANY WAIVER, MODIFICATION, CHANGE, AMENDMENT OR TERMINATION.** (e) Buyer hereby consents to the jurisdiction of any state or federal court located within the State of New York and waives personal service of any and all service of process upon it and consents that all such service of process be made by certified or registered mail directed to Buyer at the address specified on the face hereof, and service so made shall be deemed to be complete upon receipt thereof. Buyer waives any objection to jurisdiction and venue of any action instituted against it as provided herein and agrees not to assert any defense based on lack of jurisdiction or improper or inconvenient venue. (f) All notices, demands, claims and other communications under this Sales Contract are to be in writing and sent by certified mail, return receipt requested, postage prepaid, addressed to Buyer or to Seller at their respective addresses as set forth on the face hereof. All such notices, etc. shall be deemed given three days after being so posted. Either party may by written notice to the other designate a different address for receiving notices hereunder; provided however, that no such change of address will be effective until written notice thereof is actually received by the party to whom such change of address is sent.