

**MMS Contract No:** \_\_\_\_\_

Modular Mining Systems Inc.

**TERMS AND CONDITIONS OF PURCHASE**

**CONTRACT OF SALE** - This is an offer by Modular Mining Systems Inc. (hereinafter called "Modular"), to the Vendor to form a contract of sale for products and/or services. In making this offer, Modular expressly limits the acceptance of said offer by Vendor to the following terms and conditions and the terms and conditions and other provisions set forth on the face of an attached Purchase Order. Modular does not accept any prior offers from Vendor relating to the materials or services named herein which may be contained in Vendor's quotations, correspondence, specifications or discussions. The entire agreement between Modular and Vendor relating to the purchase and sale of the materials or services described on the face hereof is expressly set forth in this Purchase offer, and no modification or addition to this Purchase Order shall be of any force or effect unless it is in writing and signed by an authorized representative of Modular, and no modification of or addition to this Purchase Order shall be effected by any failure of either party to reject any form of acknowledgement or Purchase Order containing different or additional provisions. Acceptance by Vendor of this offer by Modular may be signified by Vendor's transmittal and Modular's receipt of an acknowledgement copy of this Purchase Order, signed by an authorized representative of Vendor, or by commencement of performance hereunder. The failure of either party to enforce any rights shall not constitute a waiver of such rights or any other rights under this Agreement. In the event that a purchase contract is executed and there are any conflicting terms, the terms of the contract will take precedence.

**1. SPECIFICATIONS:** As used herein, the word "Specifications" shall mean the specifications, qualities, nature, type properties, amounts, assortments and other descriptions of and requirements for the materials, articles and/or services (hereinafter called "Merchandise") as stated on the front of an applicable Purchase Order and in the Request for Quotation (if any) pursuant to which a Purchase Order is issued.

**2. INSPECTION AND ACCEPTANCE:** All Merchandise shall be received subject to the right of inspection and rejection by Modular. Merchandise, which is defective, counterfeit or not in accordance with the Specifications will be held for thirty days for Vendor's instruction at Vendor's risk and expense; and if Vendor so directs will be returned at Vendor's expense. After the expiration of thirty days Modular shall have the right to sell the Merchandise at public or private sale, continue to store it at Vendor's expense, or to treat it in any manner consistent with law. Payment for Merchandise by Modular prior to its inspection shall not constitute acceptance thereof and is without prejudice to any and all claims which Modular may have against Vendor.

**3. CANCELLATION FOR NON-PERFORMANCE:** If Vendor fails to supply the Merchandise as specified or fails to conform to these terms and conditions, Modular reserves the right (in addition to its other remedies) (a) to purchase the Merchandise from another source and (b) to cancel this Purchase Order with respect to merchandise not shipped.

**4. FORCE MAJEURE:** This Purchase Order is subject to cancellation or change on written notice to the Vendor in the event of causes beyond Modular's reasonable control, including without limitation acts of God or war, fires, earthquakes, floods, strikes, labor troubles, riots, curtailment or operations due to governmental orders or rulings, and the like,

5. CANCELLATION OR CHANGES FOR CONVENIENCE: For its convenience, Modular may cancel this Purchase Order in whole or in part or may change the Specifications or other terms and conditions dealing with quantities, shipment procedures or times or places of performance, by notice in writing to the Vendor specifying the date upon which such cancellation or change shall become effective and the extent to which such performance hereunder shall be canceled or changed. Modular and Vendor shall act in good faith to attempt to agree upon such lump sum or other compensatory financial agreement, in lieu of the price or prices elsewhere specified in this Purchase Order as the parties mutually agree is fair and equitable under the circumstances; such agreement shall be subject to the written approval of any governmental authority concerned with this Purchase Order or the Merchandise.

6. CANCELLATION FOR CONFLICT OF INTEREST: This order is subject to cancellation if there is found to be a CONFLICT OF INTEREST between a Modular employee and Vendor. A CONFLICT OF INTEREST is deemed present for many reasons, including, but not limited to: (1) a Modular employee and/or his or her spouse and/or minor children own 10% or more of the assets of an unincorporated organization or 10% or more of outstanding stock of a corporation; (2) an employee receiving any personal financial advantage or compensation with any transaction in which they might have an interest.

7. SHIPPING AND ROUTING: Shipping Terms are FOB (Incoterms 2010) Modular unless otherwise stated on the face of the purchase order. Modular reserves the right to specify a specific delivery location. In the event that any shipments are delivered to a location other than that specified, it will be the responsibility of the Vendor to have the shipment redelivered to the specific location or reimburse Modular for any charges in moving the merchandise to the specific location. All Merchandise must be forwarded by the route incurring the lowest reasonable transportation rate or in accordance with any special shipping instructions. Otherwise the difference in freight rate and extra cost of transportation will be Vendor's.

8. EXTRA CHARGES: No additional charges of any kind, including charges for boxing, packing, transportation or other extras will be allowed unless specifically agreed to in writing by an authorized purchasing agent of Modular.

9. PATENTS, COPYRIGHTS AND TRADEMARKS: Vendor warrants that the Merchandise does not infringe or violate any letters, patents, copyrights, trademarks or the like, and does not unlawfully disclose or make use of any trade secrets and covenants and agrees to hold harmless, defend and indemnify Modular, and its agents, servants, employees, successors, assigns, customers and users, against any and all claims, demands or suits and related damages, liabilities, costs and expenses (including attorney's fees) arising out of any such infringement or violation or unlawful use or disclosure of trade secrets. Vendor shall promptly report to Modular, in reasonable written detail, each notice or claim of infringement of patent, copyright, trademark or trade secret, related to the performance of this Purchase order or the Merchandise of which Vendor has notice. In the event of any claim against Modular or any governmental authority concerned with this Purchase Order or the Merchandise, on account of any alleged patent, copyright, trademark, or trade secret or similar infringement related to this Purchase Order or the Merchandise, Vendor shall promptly furnish to Modular at its request all evidence and information in the possession or control of Vendor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of Vendor. Vendor's obligations hereunder shall survive acceptance of the Merchandise and payment therefore by Modular.

10. WARRANTIES; NON-WAIVER; SET-OFF: In addition to those provided below, Vendor expressly warrants that all Merchandise is in accordance with the Specifications; is fit for the purpose for which similar materials and articles are ordinarily employed, free from defects in materials and/or workmanship, and merchantable, and was not manufactured and is not being priced or sold in violation of any federal, state or local law, including without limitation those relating to health and safety. Such warranties shall survive and shall not be deemed waived by

delivery or acceptance of, or payment for the Merchandise. Modular shall at all times have the right to set-off any amount owing from the Vendor to Modular against any amount owing from Modular to the Vendor.

11. **APPLICABLE LAW:** This purchase and transaction are governed by the laws of the State of Arizona.

12. **INDEMNIFICATION:** Vendor agrees to hold harmless, defend and indemnify Modular against any and all claims, demands or suits by any persons and against related damages, liabilities, costs and expenses (including attorney's fees), which may arise out of this Purchase Order or the use, possession or ownership of the Merchandise related thereto, caused or contributed to by either: (a) the actions or omissions (whether or not negligent) by Vendor or Vendor's agents or subcontractors including without limitation such acts or omissions to act, incident to the presence of the Vendor, its agents, and subcontractors upon Modular's premises in the course of performance under this Purchase Order; or (b) defective, unsafe or non-conforming Merchandise supplied by Vendor or Vendor's agents or subcontractors; or (c) Vendor's use and possession of Modular's property as designated in Section 16 below. The term "Modular" as used in this section includes Modular and its officers, agents, employees, students, successors, assigns, customers and users.

13. **INSURANCE:** Vendor will carry insurance to indemnify Modular against any claim for loss, damages or injury to property or persons arising out of the performance by Vendor or its employees, agents or subcontractors under this Purchase Order and the use, misuse or failure of any equipment or Merchandise used by the Vendor or its employees or agents, and shall provide certificates of such insurance to Modular if requested. Vendor agrees to maintain any legally required workers compensation insurance.

14. **ASSIGNMENT:** The Vendor agrees that it will not assign this Purchase Order without the prior written consent of Modular.

15. **SALE OR BANKRUPTCY OF VENDOR'S BUSINESS:** If, during the life of this Purchase Order, the Vendor disposes of its business by sale, transfer, force of law or by any means to another party, all obligations are transferred to such purchaser. In the event, the new owner(s) may, in Modular's absolute discretion, be required to submit a performance bond in the amount of the open balance of the Purchase Order. In the event of any suspension of payment or the institution of any proceedings by or against Vendor, voluntary or involuntary, in bankruptcy or insolvency, or under the provisions of the Federal Bankruptcy Act, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors of the property of Vendor, Modular shall have, in addition to the rights stated in the two preceding sentences, the right to cancel this Purchase Order forthwith.

16. **MODULAR'S PROPERTY:** Vendor shall commit no act and shall not permit any other person to commit any act which would encumber or impair Modular's title to such property. Vendor shall execute and deliver to Modular or cause to be executed and delivered to Modular any instruments or assurances required by Modular for the confirmation and perfection of the rights of Modular in such property. Vendor shall segregate Modular's property from that owned by it or other parties and shall designate with an appropriate sign, tag or other device, that such property is that of Modular's. Vendor shall be solely responsible for the care, use, maintenance and protection of the property referred to herein. All equipment or material (including without limitation informational material) furnished by Modular and all jigs, fixtures, dies, tools or patterns charged by the Vendor to Modular shall, unless otherwise agreed in writing, be the property of Modular and shall be returned to Modular at its written request. The Vendor will not use such equipment, material, jigs, fixtures, dies, tools and patterns in any of its business except its business with Modular under this or other purchase orders.

17. OTHER LAWS AND REGULATIONS: Vendor shall comply with all applicable federal, state and local laws and regulations.

18. TAXES & RECORDS: Vendor shall be solely responsible for filing the appropriate federal, state and local tax forms, and paying all such taxes or fees, including estimated taxes and employment taxes, due with respect to Vendor's receipt of payment under these terms. Vendor further agrees to provide Modular with reasonable assistance in the event of a government audit. Modular shall have no responsibility to pay or withhold from payment to Vendor under these terms, any federal, state, or local taxes or fees.

18. COPYRIGHT OWNERSHIP: Vendor irrevocably agrees to assign and convey to Modular any and all intellectual property created, made, conceived of, developed, reduced to practice, authored or otherwise arising under these terms. Vendor shall assist Modular or its designee, at Modular's expense, at any time as reasonably required to secure, assign, evidence, perfect, register and enforce Modular's intellectual property. Vendor agrees to keep and maintain adequate and current written records of, and promptly disclose to Modular all such intellectual property, and said records shall be the sole property of Modular. Vendor and Modular expressly agree that all copyrightable subject matter created under these terms shall be considered a "work made for hire" as this term is defined in the United States Copyright Act of 1976) (17 USC §§ 101, 201(b)). To the extent that any work may not, by operation of law, be a work made for hire, Vendor further irrevocably and exclusively assigns and agrees to assign all of its rights in and to the copyright to Modular, including but not limited to, the exclusive use, marketing and distribution rights in and to such work, and to the extent permitted, the right to secure copyright registrations and similar protections worldwide in the name of Modular.

19. RESERVATION OF RIGHTS: Modular expressly reserves all rights and remedies which are available to it at law or equity including, but not limited to, rights and remedies set forth in the Uniform Commercial Code.

20. CONFIDENTIALITY: Should Vendor acquire knowledge of Modular Confidential Information (as defined below) in connection with its performance under these terms Vendor agrees to take all reasonable precautions, but in no event less than the same degree of care that said party uses to protect its own confidential and proprietary information of a like nature, to ensure that Confidential Information is not disclosed or distributed in violation of these terms. Vendor agrees not to disclose to any third party Modular's Confidential Information or to use that Confidential Information for any purpose other than that agreed by Modular. Vendor agrees to disclose Confidential Information on a need-to-know basis, only to those employees or agents who have agreed in writing to protect said Confidential Information from unauthorized disclosure. At any time upon Modular's written request, the Vendor shall: (a) return all of Modular's tangible Confidential Information, including but not limited to all electronic documents, computer programs, documentation, notes, plans, drawings and copies thereof; and (b) provide Modular with an officer's written certification that all such tangible Confidential Information has been destroyed. The Vendor shall have ten (10) days to comply with the foregoing provisions. Confidential Information means any and all nonpublic information in whatever form disclosed or otherwise provided to Vendor by Modular, or otherwise derived from such information, that Modular identifies as confidential or that the Vendor reasonably understands to be confidential.

21. INVOICE INSTRUCTIONS & PAYMENT: The preferred method to submit invoices is a scanned copy sent to [Accounting@mmsi.com](mailto:Accounting@mmsi.com). The alternative is to mail it Attn: Accounts payable, Modular Mining Systems Inc, 3289 E Hemisphere Loop, Tucson, AZ, 85706. Vendor payments shall be made on a weekly basis relative to thirty (30) day terms from receipt of correct invoice. For goods or services ordered via PO the PO # needs to be shown. For other orders details need to be provided as to who ordered the goods and any other instructions provided. Any invoices that are incorrect due to information shown including prices will be returned to be credited in full and a new invoice raised and submitted. Modular will not short pay or accept

partial credit notes. Discount periods shall commence after the latest of correct acceptance, delivery, receipt of any required documentation, or receipt of invoice. Delays in receiving invoice, errors or omissions on invoice, or lack of supporting documentation required by the terms of the purchase order, will be cause for withholding settlement without losing discount privilege. All inquiries regarding status of payment should be done via email to [accounting@mmsi.com](mailto:accounting@mmsi.com).

22. EARLY DELIVERY materials received at Modular's facility more than fifteen (15) days prior to the scheduled delivery date may be returned to Vendor, at Vendor's expense or retained by Modular at Modular's sole option. In the event that the materials are retained by Modular the parties agree that Modular is not obligated to make payment nor will the "terms period" for payment begin until the scheduled delivery date set forth in the Order.

23. LATE DELIVERY PENALTIES: Any delivery of Merchandise past the accepted Purchase Order requested delivery date will be consider Late and all Merchandise delivered must be fully conforming to Specifications to be considered on time. Unless Vendor notified Modular in advance of the delivery date a change to the delivery date and Modular accepts the new date, then Modular may charge a late Penalty. Should Vendor fail to perform in respect of any of the Delivery obligations, Vendor shall pay to Modular a daily delay penalty of 0.05% of the price of the daily Merchandise past Modular accepted Purchase Order delivery date, without prejudice to any other legal or equitable right or remedy available to Modular.

- i. The application of the penalties will be cumulative to the extent of non-performance of each event.
- ii. The amounts of the penalties are considered a net and certain debt and may be deducted from any payment due to Vendors or from the guarantees presented, with this Purchase Orders serving as an extra-judicial executive document.

24. DELIVERY: TIME IS OF THE ESSENCE. The delivery date stated on the face of an applicable Purchase Order is the date the Merchandise is to be at the FOB location.

25. SEVERANCE. The invalidity or unenforceability of any provision in these terms pursuant to any applicable law shall not affect the validity or enforceability of the remaining provisions hereof, however, these terms shall be construed as if not containing the provisions held invalid or unenforceable in the jurisdiction in which so held, and the remaining provisions shall remain in full force and effect and shall be construed as nearly as possible as if such invalidity or unenforceability had not been declared.

26. ACCEPTANCE OF PURCHASE ORDER: Modular will only process invoices that match the Purchase Order. If a Vendor disagrees with Modular Purchase Order, the Vendor should not act on it until they receive an acceptable Purchase Order. Delivering the goods or services described in the Purchase Order commits the vendor to supply the goods or services at the price and terms shown. Email or verbal variations of the Purchase Order are not valid.

27. EXPORT. Vendor shall comply with the customs, import and export laws, and regulations of the United States (including the U.S. Export Administration Act) and all other applicable customs, import and export laws, and regulations pertaining to the goods and services under these Terms and Conditions. Vendor shall ensure that no goods or services (including software), or any portion thereof, are imported or exported, directly or indirectly, in violation of said laws. Vendor shall arrange for documentation or permits related to the import or export of goods or services, as required by applicable law. Vendor agrees to indemnify, defend and hold Modular harmless from any breach of Vendor's obligations under this Section 27.

28. CONFLICT MINERALS. Vendor shall disclose any “conflict minerals” (as such term is defined below) used in the production of any product subject to these Terms and Conditions, and, in the event such materials are used, shall submit, as applicable, either (i) its report filed with the Security and Exchange Commission under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (ii) a description of measures taken to assure the appropriate sourcing and chain of custody of such materials. As used above, the term “conflict minerals” shall have the meaning ascribed to it under Dodd-Frank and shall include, without limitation, columbite-tantalite (coltan), cassiterite, gold, wolframite or their derivatives, or any other mineral or its derivatives determined by the U.S. Secretary of State to be financing conflict in the Democratic Republic of Congo.

29. CODE OF CONDUCT. Modular is a fully-owned Komatsu entity. As such we follow the Komatsu [Worldwide Code of Business Conduct](#) and we expect all of our vendors and customers to follow the Code as well. The Code can also be found on Modular’s website on our [company values page](#).

30. COMPLIANCE. The Parties acknowledge that both faithful performance of this Agreement and compliance with any and all laws and regulations are important factors in maintaining a long-term business relationship. The Parties agree to each ensure that their own internal system is in place for observing and complying with any and all laws and regulations, and with prevailing business, social and community rules.

31. REMOVAL OF ANTI-SOCIAL FORCES. The term “**Anti-social Forces**” shall mean one or more persons or entities coming under any of the following items:

- a. “*Bouryokudan*” as defined in Article 2 Clause 2 of the Act on Prevention of Unjust Acts by Organized Crime Group Members in Japan and/or any organization affiliated to any Bouryokudan;
- b. Member or quasi-member of any Bouryokudan and/or organization as described in a, above;
- c. *Sokaiya* (professional extortionist or corporate racketeer attending shareholders’ meetings), a person or a member of an entity engaging in criminal activities under the pretext of conducting a social campaign or political activities, or a criminal group specialized in intellectual property crime, etc.;
- d. Any other person or entity that makes unreasonable demands accompanied by threat of violence, use of force, intimidating words, or fraudulent means for the purpose of obtaining unjust financial gain; or
- e. Any other person or entity that makes demands, acts, or behaves in a manner that makes use of the influence of any of the above.

Vendor represents, warrants and covenants to Modular that (a) Vendor is not now, nor has ever been, nor will exploit, an Anti-social Force; and (b) No board member, executive officer or other employee substantially involved in the management of, leading shareholder, or sponsor of Vendor is an Anti-social Force or is engaged in a relationship with any Anti-social Force.

In the event that Vendor discovers that it is in breach of any of the representations or covenants set forth in this Section 31, Vendor shall immediately report such fact to Modular.

If Vendor breaches or is suspected of any violation of any of the representations or covenants set forth in this Section 31, Modular may immediately terminate this Agreement, in whole or in part, without giving any notice or taking any other procedure and may seek from Vendor indemnification for any damages suffered as a result of such breach or violation.