

## GENERAL TERMS AND CONDITIONS OF SALE AGREEMENT

### 1. Agreement

Expressly incorporated herein by reference thereto are the Contract Documents, which may include, but are not limited to, the Specifications, Technical Clarifications, Drawings, Scope of Work, Delineation of Responsibilities and Schedule (the "Work") all as contained in the ModSpace Proposal (the "Proposal"), relating to the equipment identified or described (the "Equipment") in the Proposal and Agreement of Sale (the "Agreement"). In the event of conflict or ambiguity between Work described in the Proposal, the terms and conditions of the Agreement, and the terms and conditions of any document issued by Buyer to ModSpace purported to be part of and incorporated as a Contract Document, the governing order of precedence shall be the Proposal, the Agreement, the Buyer document.

### 2. Payment

In consideration of ModSpace furnishing Equipment, Buyer agrees to pay to ModSpace as follows:

- a. For sales less than five hundred thousand dollars: Unless otherwise specified on the front page hereof, Buyer agrees to pay to ModSpace the following percentages of the total contract price: 25% down payment upon execution of this Agreement, 50% upon delivery of the Equipment, and 25% upon substantial completion of Seller's Work on site. Invoices issued by ModSpace are solely for Buyer's convenience. Payment terms are net twenty (20) days, or sooner, from the date of ModSpace's issuance of each invoice. Buyer shall pay the full amount stated on the invoice without set-off or deduction. Buyer shall not be permitted to use or occupy the Equipment until ModSpace has received payment in full. Payment to ModSpace is not contingent upon or subject to Buyer's receipt of payment from its customer under any prime contract. Any amount not paid within twenty (20) days of the due date set forth on the invoice will be subject to a late of one and one-half percent (1-1/2%) per month or the highest rate permitted by law, with a minimum charge of fifteen dollars (\$15.00) per month, until such invoice is paid in full.
- b. For sales equal to or greater than five hundred thousand dollars: Upon execution of an Agreement, Buyer will provide ModSpace with a down payment equal to the amount as stipulated on the front page hereof. If no amount is stipulated, the amount shall be deemed to be 25% of the total contract price. As applicable, subsequent payments will be made to ModSpace on a monthly basis for the portion(s) of Work satisfactorily performed in the preceding month in accordance with the Schedule of Values as may be provided by ModSpace and as approved by Buyer and/or Owner (each as applicable). In addition to labor and material incorporated into the Work, the Schedule of Values shall include modular Equipment and other equipment either not to be incorporated or not yet incorporated in the Work but modified, manufactured or delivered to the site or to some other agreed upon staging area.
- c. On or before the 15th day of each month after Work has commenced, ModSpace shall submit to Buyer an Application for Payment on AIA G702 and G703 forms (or equivalent) updated for every billing cycle for the period ending on the last day of the preceding month. Only if agreed to in writing by ModSpace prior to the execution of an Agreement, each Application for Payment shall be accompanied by certified payrolls and a partial waiver of lien duly executed by ModSpace and all subcontractors for all work, the cost of which has been paid by Buyer to the date of the most recent payment received by ModSpace. As may be agreed to by ModSpace, each Application for Payment may include a retainage not to exceed ten percent (10%). Buyer shall have the right of inspection and verification pursuant to the Application for Payment and shall have seven (7) days within which to approve the Application. If not rejected within seven (7) days the Application for Payment is deemed correct and accepted. Upon ModSpace's receipt of approval of the Application of Payment, an invoice will be provided. Payment terms are net twenty (20) days, or sooner, from date of ModSpace's issuance of each invoice. If Buyer is not the Owner, payment terms are net thirty (30) days from ModSpace's issuance of invoice, irrespective of any payment provision to the contrary including, but not limited to, Buyer's conditional receipt of payment from Owner. In the event that any payment due ModSpace is delayed or withheld for or through any act or omission of Buyer or Owner or any circumstance or matter not directly related to ModSpace's performance of Work, all undisputed amounts owed ModSpace will be subject to interest calculated on an annual rate of twelve percent (12%) until such payment is received. In addition to the interest charges which will accrue through the date of ModSpace's receipt of payment, if ModSpace does not receive payment within seven (7) days of the due dates, ModSpace reserves the right to suspend its performance of Work until all outstanding undisputed payments have been received. This suspension of Work may cause a delay in the date that ModSpace substantially completes its Work and Buyer can beneficially occupy the Equipment (herein "Substantial Completion"). By notice contained herein, neither ModSpace nor its surety will be subject to any applicable liquidated damages or other damages, liability, claim or expense associated with its suspension of Work or delay in completion due to non-receipt of payment. Buyer shall not be permitted to use or occupy the Equipment until ModSpace has received payment in full.

### 3. Taxes

Buyer is responsible for and will pay or reimburse ModSpace, for all applicable federal, state, municipal sales, use taxes, and other taxes, fees or assessments related directly or indirectly to the purchase of the Equipment, its use or value, excluding taxes relating to income. In the event a properly executed tax exemption certificate is presented to and approved by ModSpace, Buyer will not be charged for any taxes for which it is exempt, but will remain liable for all other taxes, fees, or assessments for which the exemption does not apply. All such taxes not identified on the face page of the Agreement, will be listed as a separate line item on the invoice. If at any time the exemption claimed is deemed invalid, ModSpace will invoice Buyer for any tax not previously invoiced. Buyer's obligations under this section will survive the termination of this Agreement.

### 4. Warranty

- a. For custom built or new Equipment: For a period of one year from date of delivery to the project site, ModSpace will repair or in its sole discretion replace, including material and labor, pending receipt of written notification from Buyer, any structural component of the Equipment found to be defective and having an adverse impact on the operation and occupancy of the Equipment, excepting for such defects attributable to Buyer misuse/abuse/neglect. Except as stated above, all other warranties of any kind, including specifically any express or implied warranty of merchantability and/or fitness for purpose, other than that of commercial space, are hereby excluded. This warranty is limited to "Normal" usage and exposure. The following are excluded by the definition of "Normal" and therefore from this warranty if such conditions exist: (i) improper or failure to provide drainage of water from all surfaces on or around the Equipment, (ii) improper maintenance, (iii) installation in an area subject to heavy snow, fall out of corrosive chemicals, ash or fumes from chemical plants, foundries, plating works, kilns, fertilizing manufacturers, paper plants and the like, (iv) Acts of God, vandalism, falling objects, external forces, explosion, fire, riots, acts of war and radiation, and (v) modifications or alterations performed by Buyer or its subcontractors, that affect code compliance or the structural integrity of the Equipment or its components. In the event that Buyer discovers any defect, notice of the defect shall be given to ModSpace in writing and such notice must be sent within the warranty period by certified mail. The warranty is tendered for the sole benefit of the original Buyer and is not transferable or assignable and further is void in the event the product is removed from its original location of installation or modified by Buyer.
- b. For in-fleet existing inventory: Equipment is sold in "AS IS" condition with NO WARRANTIES EXPRESSED OR IMPLIED and the warranty as outlined in Section 4(a) is hereby specifically EXCLUDED.

### 5. Delivery and Installation

- a. Buyer will provide clear access for delivery and installation of the Equipment by standard mobile transport vehicles at the site on which the Equipment is to be used (the "Site"). Unless otherwise set forth in the ModSpace proposal, Buyer is solely responsible, at its cost, for Site preparation, including, without limitation, structural or grade alterations, snow and water removal, identification and relocation of utility lines. Buyer will provide firm and level ground with no more than a six-inch slope, from one end to the other, for safe and unobstructed installation for the Equipment. Buyer is solely responsible for site selection and subsurface conditions, including environmental conditions. **MODSPACE ASSUMES NO LIABILITY NOR OFFERS ANY WARRANTY FOR THE FITNESS OR ADEQUACY OF THE SITE OR UTILITIES AVAILABLE AT THE SITE.** Buyer will schedule its operations at the Site so that the installation of the Equipment by ModSpace can be carried out in one continuous operation and in proper sequence. ModSpace's operations will be subject to ModSpace's safety guidelines and operating instructions. Buyer will verify and demonstrate to ModSpace the presence or absence of any underground utilities in the designated building location via "mark-out" or other accepted means prior to ModSpace's installation of the building. Should this physical verification and identification not be completed prior to delivery of the Equipment, ModSpace may choose to perform this verification at Buyer's cost or reschedule its operation, as appropriate, at Buyer's cost.
- b. Buyer will have sole responsibility, at Buyer's cost, to obtain any and all licenses, titles, building and permits, other than transportation, and any other approvals and certificates as may be required by law or otherwise for the installation and placement of the Equipment and Buyer's lawful operation, possession or occupancy of the Equipment.
- c. Prices for delivery, installation and other "one-time" charges, the due dates of such charges and the Substantial Completion target date assume accuracy of the information given to ModSpace with respect to Site conditions, are subject to adjustment to the extent that the timing of or physical nature of access to the Site is or becomes limited, the Site does not have adequate load bearing or topographic qualities or is otherwise not properly prepared, snow or water is not removed, utilities are not correctly located, provision of utilities is not timely, applicable licenses or permits are not provided in a timely manner or Buyer otherwise delays completion of ModSpace's Work. In the event that any act or omission by Buyer (including the failure of Buyer to complete any work or obtain any permits for which it is responsible) or Buyer's failure to make the Site available and ready causes a delay in Substantial Completion ("Buyer Delay") or causes ModSpace to suspend, reschedule, or duplicate its performance of Work, Buyer will be liable for applicable charges and additional costs incurred by ModSpace to the extent caused by such delay. ModSpace may commence billing prior to Substantial Completion in the event Buyer Delay exceeds fourteen (14) days.
- d. ModSpace may suspend work at the Site if ModSpace deems the Site to be unsafe.

- e. Any modification(s) to the specifications or scope of work contained within the Agreement will be handled via a change order. ModSpace is not obligated to commence with any requested modifications, change directives or accept any contemplated reimbursement unless the terms of a change order are prior agreed to and countersigned by ModSpace. All change orders will be issued on a lump sum basis.
- f. Buyer warrants that he owns, or has the right to construct buildings on, the property upon which the Equipment is to be delivered, constructed, or other work performed, and will designate to ModSpace the location of the corner stakes of the property and will furnish the plot plan showing the boundary dimensions and angles of the property, and the proposed location of the site of the building or other work to be performed, together with all necessary information concerning contours, grades, soil conditions, tree locations, utility service lines, rights of way, easements and restrictions, dimensions and other relevant data pertaining to existing structures on the premises. ModSpace shall not be responsible for encroachments of any type. Buyer warrants that the said construction will not violate zoning restrictions or other laws, and Buyer agrees to indemnify and hold ModSpace harmless from all loss, damage, cost or liability which may result by reason of the delivery of the Equipment and the performance of associated Work, construction of the said building or other work done, or from any lack or defect of title in Buyer, obtaining permission of property owner, or by reason of said construction violating any zoning restrictions or other laws.
- g. Buyer agrees not to interfere with the progress of the work, and not to occupy any portion of the building until all terms and conditions herein are fulfilled by both parties. Buyer agrees to pay ModSpace for any damage that may be caused by anyone other than workers or subcontractors of ModSpace, by reason of disturbing or damaging concrete forms, grade finishing or any construction work in process whatsoever.
- h. For the purposes of acceptance, Buyer shall inspect the Equipment within 48 hours following the Substantial Completion of ModSpace's scope of work and shall provide ModSpace notice of defects in, or other proper objections to, the Equipment. Should Buyer fail to notify ModSpace of defects within the required 48-hour period, it shall be presumed that Buyer has inspected the Equipment and it is in good condition and is deemed acceptable to Buyer.

## 6. Force Majeure

ModSpace shall not be responsible for any delay in modifying, manufacturing, delivering, installing or demobilizing the Equipment resulting from or due to fire, flood, windstorm, riot, civil disobedience, strike, labor disputes, failure to secure materials from the usual source of supply, Act of God, acts of Buyer or any other circumstances beyond ModSpace's control. It is further understood and agreed that Buyer will not hold ModSpace responsible for liquidated damages or other damages for delay that may be imposed upon Buyer pursuant to any other contract that Buyer may have entered into with respect to the project to which ModSpace is not a party.

## 7. Limitation of Damages

Buyer and ModSpace do expressly waive against each other all claims and demands for loss of profits and other consequential, incidental and/or punitive damages including, but not limited to loss of business or profits, arising in connection with the Agreement.

## 8. Indemnification

- a. (a) Buyer hereby specifically indemnifies, agrees to defend and holds harmless ModSpace, its employees and agents from any and all loss, claims, liabilities, damages, fines, forfeitures, seizures, penalties and expenses (including attorneys' fees and investigative costs) that may arise from or in connection with:
  - (i) The death of or injury to any person (including but not limited to damage to the property of any person) as a result of the negligence or willful misconduct of Buyer, its employees, agents, or subcontractors in relation to this Agreement, each party's presence at the Site, Site conditions including environmental concerns, subsurface issues, and safety ; and
  - (ii) Any act or omission of Buyer in violation of this Agreement.
- b. ModSpace hereby specifically indemnifies, agrees to defend and holds harmless Buyer, its employees and agents from any and all loss, claims, liabilities, damages, fines, forfeitures, seizures, penalties and expenses (including attorneys' fees and investigative costs) to the extent that such may arise from or in connection with:
  - (i) The death of or injury to any person (including but not limited to damage to the property of any person) as a result of the negligence or willful misconduct of the ModSpace, its employees, agents, or subcontractors during and for their performance of work on the Site; and
  - (ii) Any act or omission of ModSpace in violation of this Agreement.

The obligations contained in this Section 8 shall survive expiration or termination of the Agreement.

## 9. Insurance

- a. ModSpace shall furnish its standard insurance certificate evidencing statutory Workman's Compensation, General Liability coverage of \$1,000,000 per occurrence, \$2,000,000 aggregate per policy, and Auto Liability with combined single limits of \$2,000,000, to be effective and primary for ModSpace's performance of delivery and installation on the Site. Waivers of subrogation, copies of policies or endorsements thereto are not available. Buyer and Owner (if applicable) shall be named as an additional insured with respect to liability coverage only.

- b. From the earlier of the date of when the Equipment is delivered to the Site or the date ModSpace commences Work on Site, Buyer shall maintain a policy of general commercial liability and commercial property coverage protecting ModSpace against injury or death to any person, Equipment damage or loss by fire, lightning, flood, windstorm, riot, civil disobedience, earthquake, Act of God, vandalism and other perils ordinarily included under the extended coverage for the full value of the Equipment as established by the purchase price stipulated on the front page hereof.

**10. Default**

- a. The occurrence of one or more of the following will constitute an Event of Default under the Agreement: (i) Buyer fails to pay when due the purchase price of the Equipment or any other payment due under the Agreement; or (ii) Buyer fails to perform or observe any other term or condition under the Agreement and such failure remains unremedied for more than ten (10) days after written notice of such failure to perform or observe.
- b. Upon an occurrence of an Event of Default, ModSpace will have the option to (i) declare the entire balance of monies due, (ii) enter upon any premises where any or all the Equipment is located and retake and retain any or all the Equipment free of all rights of the Buyer without any obligation to redeliver, and/or (iii) avail itself of any other remedies in addition to any remedies provided in the Agreement or existing at law or in equity. Buyer will pay to ModSpace on demand all fees, costs and expenses incurred by ModSpace in enforcing its rights under the Agreement, including without limitation reasonable attorneys' fees.

**11. Flowdown Provisions**

- a. ModSpace will not be responsible for any and all contractual terms and conditions, scope of work, administrative and submission requirements contained within any prime contract executed by and between Buyer and the Owner or Buyer's customer.
- b. For Federal Government contracts, ModSpace will only agree to the mandatory flowdown provisions as described in FAR 52.244-6 and any additional provisions as delineated within ModSpace's Proposal. This Agreement will be administered in accordance with FAR Part 12. All pricing for the "commercial items" stated herein will be based on Firm Fixed Price. ModSpace will not be responsible for providing or fulfilling any requirement for Cost or Pricing Data, Information other than Cost or Pricing Data, Cost Accounting, or most favored customer pricing.

**12. Termination**

- a. With regard to a sale of new or custom Equipment, if Buyer terminates the Agreement prior to the commencement of manufacture of the Equipment, Buyer shall reimburse ModSpace for all costs, penalties, services and termination fees assessed, associated with, or incurred plus twenty-five percent (25%). Once the manufacture of the Equipment commences, Buyer's right to terminate expires and the Buyer shall pay the stated purchase price for the Equipment plus any associated services provided.
- b. With regard to a sale of used / in-fleet Equipment from ModSpace's inventory, if Buyer terminates the Agreement, Buyer shall reimburse ModSpace for all costs, penalties, services and termination fees assessed, associated with, or incurred plus fifteen percent (15%).

**13. No Waiver**

The failure by ModSpace to enforce at any time, or for any period of time, any one or more of the terms of this Agreement shall not be a waiver of such terms and conditions or of ModSpace's right thereafter to enforce each and every term and condition contained herein.

**14. Notices**

Notices and other communications required or allowed by this Agreement shall be in writing and sent by registered U.S. mail, nationally recognized express carrier, by hand or by facsimile transmission (with confirmation of transmission) to as follows:

<b>BUYER:</b>	<b>MODSPACE:</b>
Company Name: _____	Modular Space Corporation
Address: _____	1200 Swedesford Road
City/State/Zip Code: _____	Berwyn, PA 19312
Attention: _____	Contracts Department
Fax Number: _____	610-232-1212

Alternatively, it shall be sent to such other addresses as a party may specify by proper written notice. Each notice so given shall be deemed delivered, (i) when actually received by the party to whom notice is to be given, (ii) on the first day following the day transmitted (with confirmation of receipt) if delivered by nationally recognized overnight courier service or by facsimile, or (iii) on the third business day after mailing, if mailed by first class registered or certified mail, return receipt requested, postage prepaid, addressed to the appropriate party, at the address and/or facsimile numbers of such party set forth above (or such other address as such party may designate by written notice to the other party in accordance with this section).

**15. Miscellaneous**

- a. Buyer will not have the right to assign the Agreement to any person or entity, without the prior written consent of ModSpace, which shall not be unreasonably withheld. ModSpace may assign the Agreement and the payment under a sale. If ModSpace makes such an assignment, written notice will be provided to Buyer and the assignee will acquire all rights and remedies possessed by or available to ModSpace under the Agreement.
- b. This Agreement and the documents identified in Section 1 represent the entire agreement between the parties pertaining to the Equipment. No agreements, representations or understandings not specifically contained in or referenced within this Agreement will be binding upon any of the parties hereto unless reduced to writing and signed by the parties to be bound thereby. Any amendment, modification or addendum to the Agreement will not be binding on ModSpace unless signed by an authorized representative of ModSpace. Scanned or copied signatures shall be deemed as effective as originals. This Agreement shall be governed as to its construction, interpretation and effect by the laws of the Commonwealth of Pennsylvania without regard to principles of choice of laws. Buyer hereby submits to jurisdiction and venue of any courts having situs in the Eastern District of Pennsylvania and Chester County, Pennsylvania. **BUYER HEREBY WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY OF ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT.**
- c. Manufacturer's certificate of origin or title, as applicable, to the Equipment shall be furnished to Buyer within thirty (30) days of ModSpace's receipt of payment in full. Buyer shall be responsible for all additional fees, costs, or expenses imposed by any governmental or licensing authority to effect transfer of certificate of origin or title.
- d. Section headings are for convenience only and shall not affect the construction or interpretation of this Agreement.
- e. Buyer agrees to execute and deliver to ModSpace any such documents and instruments as are requested by ModSpace in order to preserve and protect the Equipment and ModSpace's interests therein; and Buyer hereby authorizes ModSpace to file Uniform Commercial Code ("UCC") financing statements with respect to the Equipment.

**IN WITNESS WHEREOF**, the parties hereto have the authority and duly execute this Sale Agreement as of the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**SELLER: MODSPACE FINANCIAL SERVICES ("ModSpace")**

By: \_\_\_\_\_

**BUYER:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_