

**MODULAR MINING SYSTEMS
AFRICA (PTY) LTD TERMS AND
CONDITIONS OF SALE**

1. GENERAL. Modular Mining Systems Africa (Pty) Ltd ("Seller") prices are based on these Terms and Conditions of Sale. This document, together with any additional writings signed by Seller, represents a final, complete and exclusive statement of the Agreement between the parties and may not be modified, supplemented, explained or waived by parol evidence, Buyer's purchase order, course of dealing, Seller's performance or delivery, or in any other way except in writing signed by an authorized representative of Seller. These Terms and Conditions of Sale are intended to cover all activity of Buyer and Seller hereunder. **By accepting delivery of, or providing payment for (in whole or in part), the goods and/or services hereunder, Buyer agrees to be bound by these Terms and Conditions of Sale.**

If Buyer and Seller (or Seller's parent, subsidiary or affiliate, for and on behalf of Seller) have entered into an executed contract relating to the goods and/or services hereunder that is currently in effect ("Master Agreement"), then the terms and conditions of said contract shall govern and control to the extent of any conflict or inconsistency with these Terms and Conditions of Sale. These Terms and Conditions of Sale, and the executed contract relating to the goods and/or services hereunder, if any, constitute the whole agreement between the parties in regard to the matters regulated in them and they supersede and replace all prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter thereof.

The Agreement formed hereby and the language herein shall be construed and enforced under the laws of the Republic of South Africa. The rights and obligations of the parties shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods (1980). The governing language shall be the English language. In the event of a dispute as to the meaning of any transaction in any other language, the English language meaning shall govern and the other language translation shall be amended to conform to such meaning.

To the extent that the Consumer Protection Act, 2008 ("CPA") is applicable to these Terms and Conditions of Sale or any Master Agreement, the provisions of these Terms and Conditions of Sale and the provisions of the Master Agreement, if any, shall be subject to the provisions of the CPA.

2. VALIDITY. The validity of any quotation or tender response by Seller is thirty (30) days unless otherwise stated. Upon expiration of the validity period, all prices and deliveries are subject to revision unless the quotation validity is extended in writing by Seller.
3. ORDERS; ACCEPTANCE. All orders for goods and services shall be subject to acceptance by Seller, in Seller's sole discretion. **After acceptance, no order may be cancelled by Buyer without Seller's written consent. After acceptance of any order, any damages or expenses incurred by Seller as a result of cancellation, or any change requested by Buyer, will be included in Seller's invoice to Buyer unless otherwise agreed by Seller in writing. Unless otherwise stated, a minimum 10% cancellation fee will be charged to the Buyer. Goods and services delivered hereunder by Seller shall be deemed accepted by Buyer upon delivery and/or provision thereof to the Buyer,** unless Buyer reasonably rejects same in writing within ten (10) days. Buyer may not revoke acceptance and may only reject goods or services for defects substantially impairing the value of same. Buyer's remedy for lesser defects shall be those provided for under section 7 (Limited Goods and Services Warranty). **If Buyer wrongfully rejects or revokes acceptance of items tendered under this Agreement or fails to make a payment due on or before delivery, or repudiates this Agreement, Seller shall at its option have a right to recover as damages either the price as stated herein (upon recovery of the price the items involved shall become the property of the Buyer) or the profit which Seller would have made from full performance, together with incidental damages and reasonable costs. At a minimum, a 20% restocking fee will be imposed to the Buyer if any goods are shipped as well as the 10% cancellation fee.**

Quoted labor days are based on the assumption that Buyer provided resources will be adequately supplied and coordinated per the terms of this Scope of Work agreement. Failure or problems to adequately supply and/or coordinate resources may result in the need for Seller to charge additional labor hours to the project. Seller reserves the right to charge Buyer for additional labor incurred due to such instances. Additionally, if such delays occur, it may be necessary for Seller to reschedule site visits to complete installations at later dates (this could be well over 30 days).

4. PRICE; TAXES. Attached prices and deliveries quoted are those currently in effect. Beyond the validity date, prices in effect at the time of shipment and/or provision shall apply unless otherwise stated in writing by Seller. Prices exclude all applicable taxes and withholdings, including but not limited to tariffs, customs and import duties, value-added taxes, sales taxes, use taxes, and/or any other governmental charges levied or otherwise exacted upon goods and services hereunder. All taxes or government charges required to be paid by Seller resulting from this Agreement shall be on Buyer's account.
5. SHIPMENT; RISK OF LOSS AND TITLE. Unless otherwise expressed in a written document signed by Seller, all shipments shall be FCA Seller's point of origin (Incoterms 2010) and **Buyer assumes full risk of loss of goods at Seller's point of origin.** All delivery dates are approximate unless otherwise indicated. Seller agrees to utilize reasonable efforts to meet the delivery dates quoted to Buyer, however, **Seller assumes no liability and shall not be in default for failure to deliver as estimated.** Seller reserves the right to make partial shipments and to ship goods as they become available. **Title to goods shall remain with Seller and shall not pass to Buyer until payment for goods is received in full and Seller may repossess the same upon Buyer's default in payment hereunder and charge Buyer with any deficiency. Buyer shall be solely responsible for insuring the goods sold hereunder.**
6. PAYMENT TERMS. Payments shall be made to Seller in accordance with the terms applicable at the date of each shipment and service. All amounts hereunder are due and payable in United States currency unless otherwise indicated. Any payment due and payable upon order, as stipulated by Seller, shall be due and payable immediately upon receipt of invoice. Subject to credit approval, all other amounts are due in full, thirty (30) days from the date of invoice, unless otherwise specified in Seller's document referencing these terms and conditions. Buyer shall have fifteen (15) days from the date of invoice to reasonably contest amounts or items charged. **Any invoice or portion thereof not contested within said fifteen (15) day period shall be deemed final as to the amount due and owing.** Where the full price of goods and services provided by Seller hereunder is not paid prior to delivery, **Seller hereby retains and Buyer grants to Seller security in the goods described in this Agreement, all additions and accessions thereto, and the proceeds thereof, to secure payment of Buyer's obligations to Seller.** Buyer agrees to reasonably assist Seller in protecting Seller's security interest and Buyer agrees that a filing of a photocopy of this document shall serve as a financing statement. **A finance charge at the maximum legal rate (or if no maximum is specified, at a rate of eighteen percent (18%) per annum, calculated daily) will be added to unpaid amounts. Interest charges shall continue to accrue until all balances are paid to Seller in full. Additionally, where Buyer defaults on the terms of payment, Seller may suspend further shipments or may cancel the unshipped balance of the order and hold Buyer liable for damages.** Notwithstanding any statement appearing on or referring to past due amounts, acceptance of any partial payment shall not constitute a waiver of Seller's right to payment in full for amounts due and payable. **In the event of non-payment, Buyer shall pay all associated collection charges, including attorney fees on an attorney-own-client scale and court costs incurred by Seller.**
7. LIMITED GOODS AND SERVICES WARRANTY. Seller warrants to Buyer for a period of ninety (90) days from shipment of licensed software or the provision of services hereunder and one (1) year from the shipment of new hardware: (a) that the goods shall be free from defects in materials and workmanship, and will substantially comply with the functional specifications set forth in Sellers (Modular branded goods), or original equipment manufacturer's (OEM branded goods) documentation, as applicable, and **(b) that the services shall be provided in a professional and workmanlike manner.** Refurbished hardware has a thirty (30) day warranty from the date of shipment.

Seller does not warrant that: (i) the goods will meet Customer's requirements; (ii) the goods will operate in combination with other goods not provided by Seller under this Agreement; (iii) the goods will operate uninterrupted or error free; or (iv) that all errors will be corrected; and Buyer must notify Seller in writing of any nonconformity within the limited warranty period and Buyer's failure to submit a claim shall specifically waive all claims for damages or other relief.

Seller's entire liability and Buyer's sole and exclusive remedy for Seller's breach of the foregoing warranty shall be at Seller's option: (a) correction of the defect, at Seller's expense; or (b) a refund of the price paid to Seller for the nonconforming goods or services, or portion thereof.

Where labor, repair or parts replacement is required due to: (a) negligent use, misuse, or damage, or any cause other than normal use (including but not limited to use other than in accordance with Seller and/or OEM's instruction); (b) conditions outside of specifications; or (c) alterations or modifications by a party other than Seller; then the warranty and repair obligations otherwise provided herein shall not apply. All warranty labor, repair or parts replacement shall be warranted for the remainder of the original limited warranty periods only. **Buyer shall pay shipping and all associated costs required to deliver warranted parts to Seller's designated point. Buyer assumes all risk of loss and damage for warranted, repair or replacement parts while in transit.**

EXCEPT FOR THE LIMITED WARRANTY STATED ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER PROVIDES ALL GOODS AND SERVICES "AS IS" AND DISCLAIMS ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED, OR STATUTORY. TO THE EXTENT PERMITTED BY LAW, SELLER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND AGAINST INFRINGEMENT.

8. LICENSED SOFTWARE. All software is provided subject to a license agreement and Buyer agrees to be bound by said license agreement. Seller's software is licensed according to the license terms and conditions provided with said software and incorporated herein by reference. **Buyer acknowledges that any and all licenses granted shall only provide Buyer with a right of limited use.** In the absence of specific license terms and conditions accompanying software delivered or otherwise provided to Buyer, said software shall be licensed to Buyer on Seller's standard software license terms and conditions, said terms and conditions available upon request.
9. BUYER INDEMNITY. To the fullest extent permitted by law, **Buyer shall indemnify, defend and hold Seller, including Seller's officers, directors, agents, employees, subsidiaries, affiliates, successors and assigns, harmless from any and all claims, actions, proceedings, liabilities, losses, damages, costs, or expenses (including attorneys' fees) arising from: (a) Buyer's modification(s) of and/or addition(s) to the goods or services provided hereunder; (b) Buyer's omissions, misrepresentations, or negligence arising from the use of the goods and/or services; (c) misuse or abuse of the goods (including use of goods outside the scope of Seller's documentation); (d) custom goods or services provided to Buyer based on Buyer specifications; (e) Buyer's breach of these terms and conditions; and (f) any other indemnity provided by Buyer in these Terms and Conditions.**
10. **LIMITATION OF LIABILITY. SELLER'S TOTAL LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER ARISING HEREUNDER SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY SELLER IN AN AMOUNT NOT TO EXCEED THE PRICE PAID BY BUYER TO SELLER FOR THE GOODS OR SERVICES GIVING RISE TO THE CLAIM. IN NO EVENT SHALL SELLER BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, REVENUE, DATA, OR DATA USE) WHETHER AN ACTION IN CONTRACT, TORT, OR BASED ON ANY OTHER LEGAL THEORY EVEN WHERE SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE RESULTING FROM ANY LIMITED REMEDY AND TO THE MAXIMUM EXTENT PERMITTED BY LAW.**

BUYER HEREBY AGREES TO INDEMNIFY SELLER AGAINST ANY DIRECT OR INDIRECT HARM, DAMAGES (CONSEQUENTIAL OR OTHERWISE), LOSS OF PROFITS, LOSS OF CONTRACT, COSTS, AND/OR EXPENSES SUSTAINED OR INCURRED BY THE SELLER AS A RESULT OF ANY CLAIM BROUGHT AGAINST SELLER BY A CONSUMER IN TERMS OF SECTION 61 OF THE CPA, OR ANY OTHER LEGISLATION OR LAW, ARISING FROM THE USE BY THE AFORESAID CONSUMER OF THE GOODS SUPPLIED BY THE BUYER PURSUANT TO THIS TERMS AND CONDITIONS OF SALE OR THE MASTER AGREEMENT, AS APPLICABLE.

11. CONFIDENTIAL INFORMATION. The parties acknowledge that they may obtain certain information, oral, written, or otherwise (in whatever form), of a confidential nature (or which reasonably ought to be known to be confidential) from the disclosing party in relation to the disclosing party and/or its affiliate or subsidiary's business, including without limitation, business, financial and technical materials, and information and data ("Confidential Information"). The Parties agree not to make each other's Confidential Information available in any form to a third party or to use each other's Confidential Information for any purpose other than the implementation of this Agreement. Each party agrees to take all reasonable precautions to ensure that Confidential Information is not disclosed or distributed in violation of this Agreement. The parties agree to disclose Confidential Information on a need-to-know basis only, to those employees who will protect said Confidential Information from unauthorized disclosure. Confidential Information includes the terms and provisions of this Agreement and any transactions or documents executed by the parties pursuant hereto. At any time, upon the disclosing party's written request, the receiving party shall: (a) return all the disclosing party's tangible Confidential Information, including but not limited to all electronic documents, computer programs, documentation, notes, plans, drawings and copies thereof; and (b) provide the disclosing party with an officer's written certification that all such tangible Confidential Information has been destroyed. The receiving party shall have ten (10) days to comply with the foregoing provisions.
12. INTELLECTUAL PROPERTY. The parties acknowledge that Seller owns or licenses from third parties all right, title, and interest in and to the goods, software and services (except for third party ("OEM") goods, software and services) provided to Buyer hereunder, including without limitation, any and all patents, patent rights, copyrights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights, derivative works, and other intellectual property rights, conceived of or developed, or reduced to practice, or caused to be conceived of or developed or reduced to practice, as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, recognized under any state, country, or territory's laws, or international treaty ("Intellectual Property"). Buyer shall not in any manner whatsoever, infringe directly or indirectly on the rights of Seller to the Intellectual Property and/or the use thereof and shall cooperate with Seller fully as requested in regard to Seller's protection and enforcement of its rights to the Intellectual Property.
13. EXPORT. **Buyer 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 this Agreement. Buyer shall ensure that no goods or services (including software), or portion thereof, are imported or exported, directly or indirectly, in violation of said laws.** Buyer shall arrange for documentation or permits related to the import or export of goods or services, as required by applicable law. **BUYER AGREES TO INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY BREACH OF BUYER'S OBLIGATIONS UNDER THIS SECTION.**
14. SEVERANCE. The invalidity or unenforceability of any provision of these terms and conditions pursuant to applicable statute, law or regulation shall not affect the validity or enforceability of the remaining provisions hereof. However, these terms and conditions shall be construed as if not containing the provision held invalid or unenforceable in the jurisdiction in which so held, and remaining provisions shall remain in full force and effect.
15. FORCE MAJEURE. **Seller shall not be liable to Buyer for any failure in the performance of Seller's obligations hereunder where such failure is due to a cause beyond Seller's reasonable control, and is not otherwise a result of the negligence of the Seller, and which by the exercise of due diligence, could not be overcome or avoided, including but not limited to fires, strikes, civil commotion, war, earthquakes, epidemic, floods, accidents, or acts of God ("Force Majeure Event").** Upon the occurrence of a Force Majeure Event which prevents Seller either wholly or in part

from fulfilling any of its obligations hereunder, such obligation and the time for performance shall be extended to the extent and for as long as such obligation is affected by the Force Majeure Event. Party claiming the benefit of this section shall be entitled to an extension of time to fulfill such obligation as may be reasonably necessary in the circumstances.

16. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and shall inure to the benefit of Seller, its successors and assigns and Seller shall require any successor or assign to expressly assume and agree to perform this Agreement in the same manner and to the same extent that Seller would be required to perform it if no such succession or assignment had taken place. The term "successors and assigns" as used herein shall mean a corporation or other entity acquiring or otherwise succeeding to, directly or indirectly, all or substantially all the assets and business of Seller. This Agreement or any right, duty, obligation, or interest hereunder shall not be assignable or transferable by Buyer without Seller's written consent.
17. **DISPUTE RESOLUTION.** Should any dispute, disagreement, deadlock or claim arise between the parties (hereinafter called "the Dispute") related to or in connection with the these Terms and Conditions of Sale and/or the Master Agreement, the parties to the Dispute will attempt to resolve the Dispute by a process of negotiation; this will entail any party to the dispute inviting the other party to the Dispute in writing to meet and both parties endeavoring to resolve the Dispute within 10 (ten) business days from the date of receipt of the written invitation; should the Dispute not be resolved by such negotiation, then the Dispute, if arbitrable in law, will be finally resolved by arbitration in accordance with the expedited rules of the Association of Arbitrators (Southern Africa), by a single arbitrator appointed by the Association of Arbitrators (Southern Africa) or if the Association of Arbitrators (Southern Africa) no longer exists, then the arbitrator shall be appointed by the President for the time being of the Law Society of the Northern Provinces of South Africa and the arbitration shall be conducted in accordance with the Arbitration Act No. 42 of 1965. The arbitration shall be held in Sandton, Johannesburg, or such other place as agreed to between the parties; the substantive and procedural law of the arbitration shall be the law of the Republic of South Africa.

Each PARTY to this AGREEMENT by its respective signature hereto expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and irrevocably authorises any other of them to apply, on behalf all the parties to such Dispute, in writing, to the secretariat of the Association of Arbitrators (Southern Africa) for any such arbitration to be conducted on an urgent basis. This clause 17 will not preclude any party from obtaining relief by way of motion proceedings on an urgent basis or from instituting any interdict, injunction or any similar proceedings in any court of competent jurisdiction. For the purposes of having any award made by the arbitrator being made an order of court, each of the parties hereby submits itself to the non-exclusive jurisdiction of the South Gauteng High Court. This clause 17 is severable from the rest of the provisions of these Terms and Conditions of Sale and/or the Master Agreement and will accordingly remain in full force and effect and survive any termination of such agreements.

18. **CODE OF BUSINESS CONDUCT.** The Buyer shall ensure that it understands and operates within the requirements of the Seller's Code of business Conduct, copies of which can be found at <http://www.komatsu.com/CompanyInfo/profile/conduct/>. If the Buyer has any questions with regards to the interpretation of this document, they are to contact the Compliance Officer for clarity.