

## TERMS AND CONDITIONS OF SALE – GOODS AND SERVICES

### 1 DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1.1 **"Business Day"** means a day other than a Saturday, Sunday or public holiday in the United States of America.

1.1.2 **"Conditions"** means these terms and conditions as amended from time to time in accordance with clause 19.7.

1.1.3 **"Contract"** means the contract between Mo-Sys USA Inc. and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

1.1.4 **"Customer"** means the business which purchases the Goods and/or Services from Mo-Sys USA Inc..

1.1.5 **"Force Majeure Event"** has the meaning given to it in clause 17.

1.1.6 **"Goods"** means the goods (or any part of them) set out in the Order.

1.1.7 **"Goods Specification"** means a specification provided by the Customer to Mo-Sys USA Inc..

1.1.8 **"Intellectual Property Rights"** means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

1.1.9 **"Mo-Sys USA Inc."** means Mo-Sys USA Inc., registered in the United States of America with company number C4699143, whose registered address is c/o LH Frishkoff & Co, 546 Fifth Avenue, 9th Floor New York, New York, 10036, United States of America.

1.1.10 **"Order"** means the Customer's order for the supply of Goods and or Services, as set out in the Customer's written acceptance of Mo-Sys USA Inc. quotation.

1.1.11 **"Services"** means the services supplied by Mo-Sys USA Inc. to the Customer as set out in the Order.

### 2 BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when Mo-Sys USA Inc. issues written acceptance of the Order at which point, and on which date the Contract shall come into existence (the **"Commencement Date"**).

2.3 Any samples, drawings, descriptive matter or advertising issued by Mo-Sys USA Inc. and any descriptions of the Goods or illustrations or descriptions of the Services contained in Mo-Sys USA Inc.'s marketing materials are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by Mo-Sys USA Inc. shall not constitute an offer and is only valid for a period of 30 Business Days from its date of issue.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.7 Our terms and conditions are our fundamental terms of business. By accepting our quotation and raising a purchase order you agree to our terms and conditions without exception. Our terms and conditions supersede and take precedence over any other terms and conditions.

### 3 GOODS

3.1 To the extent that the Goods are to be manufactured in accordance with a Goods Specification in relation to a bespoke project requested by the Customer, the Customer shall indemnify Mo-Sys USA Inc. against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Mo-Sys USA Inc. arising out of or in connection with any claim made against Mo-Sys USA Inc. for actual or alleged infringement of a third party's Intellectual Property rights arising out of or in connection with Mo-Sys USA Inc.'s use of the Goods Specification. This clause 3.1 shall survive termination of the Contract.

3.2 Mo-Sys USA Inc. reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and Mo-Sys USA Inc. shall notify the Customer in any such event.

### 4 DELIVERY OF GOODS

4.1 All goods shall be shipped on EX-WORKS terms from Mo-Sys Engineering Ltd.'s London address of Thames Bank House, Tunnel Avenue, SE10 0PA, London, United Kingdom. Mo-Sys USA Inc. shall arrange for delivery of the Goods to the location set out in the Order or such other location as the parties may agree (the "Delivery Location") at any time after Mo-Sys USA Inc. notifies the Customer that the Goods are ready.

4.2 (not used in this Contract).

4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The standard delivery time is 8 weeks from the deposit being received in cleared funds. An estimated delivery date shall be provided once a 50% deposit (subject to clause 11) has been received from the Customer (in cleared funds) unless agreed otherwise in writing in the Order.

4.4 Mo-Sys USA Inc. shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Mo-Sys USA Inc. with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If Mo-Sys USA Inc. fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Mo-Sys USA Inc. shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Mo-Sys USA Inc. with adequate delivery

instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 If the Customer fails to take delivery of the Goods within three Business Days of Mo-Sys USA Inc. notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Mo-Sys USA Inc.'s failure to comply with its obligations under the Contract in respect of the Goods:

4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Mo-Sys USA Inc. notified the Customer that the Goods were ready; and

4.6.2 Mo-Sys USA Inc. shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

4.7 If ten Business Days after the day on which Mo-Sys USA Inc. notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, Mo-Sys USA Inc. may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

4.8 Mo-Sys USA Inc. may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5 QUALITY OF GOODS

5.1 Mo-Sys USA Inc. warrants that on delivery, and for a period of 12 months from the date of delivery ("warranty period"), the Goods shall:

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

5.1.2 be of satisfactory quality for standard professional use

5.2 Subject to clause 5.3, Mo-Sys USA Inc. shall, at its option and its sole discretion, repair or replace the defective Goods, if:

5.2.1 the faults with the Goods cannot be resolved remotely by initially contacting Mo-Sys USA Inc. support at support@mo-sys.com;

5.2.2 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 clause 5.1; and

5.2.3 Mo-Sys USA Inc. is given a reasonable opportunity of examining such Goods.

5.3 Mo-Sys USA Inc. shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;

5.3.2 the defect arises because the Customer failed to follow Mo-Sys USA Inc.'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;

5.3.3 the Customer alters or repairs such Goods without the written consent of Mo-Sys USA Inc.;

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

5.3.5 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, Mo-Sys USA Inc. shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The Customer shall obtain the Mo-Sys USA Inc. RMA form and complete and return it to Mo-Sys USA Inc. prior to the return of any Goods. The Customer shall contact admin@mo-sys.com to obtain the form.

5.6 Shipping costs associated with the return of repaired Goods to Mo-Sys USA Inc. shall be covered by the warranty. If the Goods are no longer covered by the warranty set out in clause 5.1, the shipping costs to send the Goods to Mo-Sys USA Inc. shall be sole the responsibility of the Customer and the shipping costs for the return to the Customer after repair shall be charged to the Customer and appear in the proforma invoice associated with the repair.

5.7 The warranty shall be extended to two years on the condition that the end user agrees to be included in the Mo-Sys USA Inc. client database within one month from the date of purchase. The end user shall contact info@mo-sys.com to express their interest in the extended warranty. The end user shall receive Mo-Sys USA Inc. marketing material once joining the Mo-Sys USA Inc. client database and shall be free to opt out of such material at any time by following the instructions on said material.

## 6 TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery. Title to the Goods:

6.1.1 shall not pass to the Customer until Mo-Sys USA Inc. receives payment in full (cleared funds) for the Goods that have been purchased; and

6.1.2 shall not pass to the Customer where the Customer is renting the Goods.

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

6.2.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Mo-Sys USA Inc.'s property;

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

6.2.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Mo-Sys USA Inc.'s behalf from the date of delivery;

6.2.4 notify Mo-Sys USA Inc. immediately if it becomes subject to any of the events listed in clause 15.1.3 to clause 15.1.5; and

6.2.5 give Mo-Sys USA Inc. such information relating to the Goods as Mo-Sys USA Inc. may require from time to time.

## 7 SUPPLY OF SERVICES

7.1 Mo-Sys USA Inc. shall supply the Services to the Customer in accordance with the quotation in all material respects.

7.2 The parties shall enter into a separate Service Agreement in relation to any support Services to be provided.

## 8 RENTAL

8.1 If the Order stipulates that Mo-Sys USA Inc. has agreed to rent the Goods, delivery of the Goods shall be made by Mo-Sys USA Inc., exclusive of delivery costs, which will be subject to a separate quotation.

8.2 Mo-Sys USA Inc. shall use all reasonable endeavours to deliver the Goods by the date and time agreed between the parties in the Order.

8.3 The Goods shall at all times remain the property of Mo-Sys USA Inc., and the Customer shall have no right, title or interest in or to the Goods (save the right to possession and use of the Goods subject to these Conditions).

8.4 The risk of loss, theft, damage or destruction of the Goods shall pass to the Customer on completion of delivery. The Goods shall remain at the sole risk of the Customer during the rental period and any further term during which the Goods is in the possession, custody or control of the Customer until such time as the Goods is redelivered to Mo-Sys USA Inc..

8.5 If the Customer rents any Goods it shall:

8.5.1 ensure that the Goods are kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;

8.5.2 take such steps as may be necessary to ensure, so far as is reasonably practicable, that the Goods are at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

8.5.3 maintain at its own expense the Goods, in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Goods;

8.5.4 make no alteration to the Goods and shall not remove any existing component(s) from the Goods;

8.5.5 keep Mo-Sys USA Inc. fully informed of all material matters relating to the Goods;

8.5.6 permit Mo-Sys USA Inc. or its duly authorised representative to inspect the Goods at all reasonable times and for such purpose to enter upon any premises at which the Goods may be located, and shall grant reasonable access and facilities for such inspection;

8.5.7 not, without the prior written consent of Mo-Sys USA Inc., part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Goods or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

8.5.8 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of Mo-Sys USA Inc. in the Goods and, where the Goods has become affixed to any land or building, the Customer must take all necessary steps to ensure that Mo-Sys USA Inc. may enter such land or building and recover the Goods both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of Mo-Sys USA Inc. of any rights such person may have or acquire in the Goods and a right for Mo-Sys USA Inc. to enter onto such land or building to remove the Goods;

8.5.9 not suffer or permit the Goods to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Goods is so confiscated, seized or taken, the Customer shall notify Mo-Sys USA Inc. and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Goods and shall indemnify Mo-Sys USA Inc. on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

8.5.10 not use the Goods for any unlawful purpose;

8.5.11 ensure that at all times the Goods remain identifiable as being Mo-Sys USA Inc.'s property and wherever possible shall ensure that a visible sign to that effect is attached to the Goods; and

8.5.12 deliver the Goods at the end of the Rental Period or on earlier termination of this Contract at such address as Mo-Sys USA Inc. requires, or if necessary, allow Mo-Sys USA Inc. or its representatives access to any premises where the Goods is located for the purpose of removing the Goods.

8.5.13 The Customer acknowledges that Mo-Sys USA Inc. shall not be responsible for any loss of or damage to the Goods arising out of or in connection with any negligence, misuse, mishandling of the Goods or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify Mo-Sys USA Inc. on demand against the same, and against all losses, liabilities,

claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of these Conditions.

## 9 DEMO SYSTEMS

9.1 If the equipment is for demonstration or any other temporary purpose. It shall not become the property of the customer, the customer shall not sell, or otherwise part with possession of the equipment.

9.2 The Customer shall be solely responsible for any loss or damage to the equipment during the loan/demo period until the equipment is returned to Mo-Sys USA Inc.

9.3 Failure to return the equipment in its original packaging, in good working order, on the agreed return date shall constitute as the customers agreement to purchase the equipment at the value in the related invoice.

9.4 Mo-Sys USA Inc. shall reserve the right to recall any demo unit with a 1-week notice period, if there has been no significant interest generated within a 3-month period.

9.5 Any extensions made to the demo rental period, shall be agreed in writing by both parties.

## 10 CUSTOMER'S OBLIGATIONS

10.1 The Customer shall:

10.1.1 ensure that the terms of the Order are complete and accurate;

10.1.2 co-operate with Mo-Sys USA Inc. in all matters relating to the Services;

10.1.3 provide Mo-Sys USA Inc., its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Mo-Sys USA Inc. to provide the Services and deliver the Goods;

10.1.4 provide Mo-Sys USA Inc. with such information and materials as Mo-Sys USA Inc. may reasonably require in order to supply the Goods and/or Services, and ensure that such information is complete and accurate in all material respects; and

10.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

10.2 If Mo-Sys USA Inc.'s performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):

10.2.1 without limiting or affecting any other right or remedy available to it, Mo-Sys USA Inc. shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Mo-Sys USA Inc.'s performance of any of its obligations;

10.2.2 Mo-Sys USA Inc. shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Mo-Sys USA Inc.'s failure or delay to perform any of its obligations as set out in this clause 10.2; and

10.2.3 the Customer shall reimburse Mo-Sys USA Inc. on written demand for any costs or losses sustained or incurred by Mo-Sys USA Inc. arising directly or indirectly from the Customer Default.

## 11 CHARGES AND PAYMENT

11.1 The price for Goods and/or Services:

11.1.1 shall be the price set out in the Order; and

11.1.2 shall be exclusive of all import duties and taxes which may be payable.

11.2 Full payment shall be made at the stage of the Order for custom development goods designed in accordance with a Good Specification.

11.3 Full payment shall be made at the stage of order for Goods with a value of £4,500.00 or less.

11.4 Mo-Sys USA Inc. shall charge the Customer for any expenses reasonably incurred by the individuals whom Mo-Sys USA Inc. engages in connection with the Services including travelling expenses, accommodation, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Mo-Sys USA Inc. for the performance of the Services, and for the cost of any materials. Mo-Sys USA Inc. shall invoice the Customer in relation to such costs upon completion of the Services.

11.5 Mo-Sys USA Inc. reserves the right to:

11.5.1 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Mo-Sys USA Inc. that is due to:

11.5.1.1 any factor beyond the control of Mo-Sys USA Inc. (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

11.5.1.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

11.5.1.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Mo-Sys USA Inc. adequate or accurate information or instructions in respect of the Goods.

11.6 In respect of Goods, Mo-Sys USA Inc. shall issue a pro forma invoice for 50% of the total invoice value to the Customer upon placement of the order with Mo-Sys USA Inc. which shall be either the return of a signed quotation or Purchase Order from the Customer. Mo-Sys USA Inc. shall issue a second pro forma invoice for the remaining 50% prior to the shipment of goods. In respect of Services, Mo-Sys USA Inc. shall issue a separate pro forma invoice to the Customer in advance except for expenses as per clause 11.4.

11.7 The Customer shall pay each pro forma invoice submitted by Mo-Sys USA Inc.:

11.7.1 50% of the total invoice value shall be paid by the Customer upon receipt of the pro forma invoice, at the beginning of any build of the goods. The remaining 50% shall be paid prior to any shipment of goods.

11.8 in full and in cleared funds to a bank account nominated in writing by Mo-Sys USA Inc.. For the avoidance of doubt, settlement of any charges that are owned under this Agreement by the Customer shall not be made until cleared funds are received by Mo-Sys USA Inc., and

11.8.1 time for payment shall be of the essence of the Contract.

11.9 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by Mo-Sys USA Inc. to the Customer, the Customer shall, on receipt of a valid VAT invoice from Mo-Sys USA Inc., pay to Mo-Sys USA Inc. such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

11.10 If the Customer fails to make a payment due to Mo-Sys USA Inc. under the Contract by the due date, then, without limiting Mo-Sys USA Inc.'s remedies under clause 15 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 11.10 will accrue each day at 4% a year above the Bank of

England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

11.11 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11.12 Mo-Sys USA Inc. Shall not be held accountable for funds transferred into incorrect bank accounts, whether accidentally or as a result of fraudulent activity. Payment details shall be presented on the invoice only. In the instance that The Customer has received communication indicating that the bank account details have changed, whether from a contact inside or outside of Mo-Sys USA Inc., Mo-Sys USA Inc. advise that The Customer contact Mo-Sys USA Inc. via telephone immediately to confirm. The Customer shall be responsible for confirming any changes to bank account details with Mo-Sys USA Inc. via telephone.

## 12 INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in or arising out of or in connection with Goods and provision of Services (and for the avoidance of doubt, development of Goods for a Customer to a Goods Specification) shall be owned by Mo-Sys USA Inc.

## 13 CONFIDENTIALITY

13.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or Mo-Sys USA Inc. of the other party, except as permitted by clause 13.2.

13.2 Each party may disclose the other party's confidential information:

13.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13; and

13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13.4 Mo-Sys USA Inc. shall be authorised to mention the Customer's name in its marketing material and to other potential Customers in order to increase its good standing reputation. Mo-Sys USA Inc. shall not share any confidential information or information regarding the details of Customer's orders including price details with any other party.

13.5 The Customer shall not discuss any discounted prices received from Mo-Sys USA Inc. in connection with any Goods or Services provided.

## 14 LIMITATION OF LIABILITY

14.1 Nothing in these Conditions shall limit or exclude Mo-Sys USA Inc.'s liability for:

14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

14.1.2 fraud or fraudulent misrepresentation;

14.1.3 (not used in this Contract)

14.1.4 (not used in this Contract)

14.1.5 any matter in respect of which it would be unlawful for the Mo-Sys USA Inc. to exclude or restrict liability.

14.2 Subject to clause 14.1:

14.2.1 Mo-Sys USA Inc. shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

14.2.2 Mo-Sys USA Inc.'s total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Services and or Goods provided to the Customer in a financial year.

## 15 TERMINATION

15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

15.1.1 either party provides the other with no less than six months' written notice;

15.1.2 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;

15.1.3 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

15.1.4 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

15.1.5 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

15.2 Without affecting any other right or remedy available to it, Mo-Sys USA Inc. may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

15.3 Without affecting any other right or remedy available to it, Mo-Sys USA Inc. may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Mo-Sys USA Inc. if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.1.3 to clause 15.1.5, or Mo-Sys USA Inc. reasonably believes that the Customer is about to become subject to any of them.

## 16 CONSEQUENCES OF TERMINATION

16.1 On termination of the Contract:

16.1.1 the Customer shall immediately pay to Mo-Sys USA Inc. all of Mo-Sys USA Inc.'s outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Mo-Sys USA Inc. shall submit an invoice, which shall be payable by the Customer immediately on receipt;

16.1.2 the Customer shall return all Goods which have not been fully paid for. If the Customer fails to do so, then Mo-Sys USA Inc. may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

16.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## 17 FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a Force Majeure Event).

## 18 PUBLICITY

18.1 Mo-Sys USA Inc. shall be entitled at any time to identify the Customer as a client of Mo-Sys USA Inc. using a particular product or as part of a project, including the Customer's logo on marketing literature and on the Mo-Sys USA Inc. website.

18.2 Save as otherwise provided for in this Contract, Mo-Sys USA Inc. shall obtain the Customer's prior agreement for the use of the Customer's name for any other purpose.

## 19 GENERAL

19.1 Assignment and other dealings

19.1.1 Mo-Sys USA Inc. may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

19.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

19.2 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 19.2 shall not affect the validity and enforceability of the rest of the Contract.

19.3 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

19.4 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

19.5 Entire agreement. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently

or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

19.6 Third party rights.

19.6.1 Unless it expressly states otherwise, the Contract does not give rise to any rights to third parties to enforce any term of the Contract.

19.7 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

19.8 Governing law. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of the State of California, United States of America

19.9 Jurisdiction. Each party irrevocably agrees that the courts of California shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.