

SHORT FORM NEW BUILDING SALE, DELIVERY, AND INSTALLATION TERMS

EXHIBIT 1 - MODULAR GENIUS, INC. NEW BUILDING SALE, DELIVERY & INSTALLATION TERMS AND CONDITIONS – Rev. 2/26

The following sale, delivery and installation terms and conditions (“Exhibit 1”) are attached to and incorporated by reference into the **Modular Genius, Inc.** (“Seller” or “MGI”) Proposal to which they are attached (the “MGI Proposal”) to facilitate the sale of one or more modular buildings (the “Building(s)”) to the customer identified therein (“Buyer” or “Customer”). This Exhibit 1, the MGI Proposal, and any other documents attached and incorporated into the MGI Proposal are collectively referred to herein as the “Agreement.” Buyer and Seller may be referred to herein collectively as the “Parties.”

1. **BUILDING DESCRIPTION:** The Buyer shall purchase, and Seller shall sell, deliver and install the Building(s) described in the MGI Proposal to which this Exhibit is appended and incorporated as an Exhibit.

2. **BUILDING LOCATION:** The Building(s) will be delivered to and installed to the location and site described in the MGI Proposal (hereinafter, “Location”). At least seven (7) days prior to the commencement of Work, Buyer will specify to Seller in writing, or by provision of approved plans, the actual placement of and elevation for the Building(s) at the site Location. Buyer represents and warrants that it either owns the site or has express authorization from the owner of the site to place and install the Building(s) at the Location.

3. **SCOPE OF WORK:** Seller agrees to sell, deliver to, and install the Building(s) for Buyer in accordance with the scope of work and specifications (the “Work”) provided in the MGI Proposal. No additional work beyond what is specified in the Agreement and the documents incorporated herein shall be considered inferable. Seller’s Agreement and related documents shall constitute the exclusive interpretation of the Work and shall prevail in the event of any inconsistencies between Seller’s Agreement and any other plans, specifications or documents related to the Work.

4. **SITE CONDITIONS:** It shall be the responsibility of the Buyer, prior to contracting, to determine if the Location is suitable for the placement and installation of the Building(s). Seller has not done any independent investigation or testing to determine the suitability of the Location for Building placement and installation. To install the Building(s) described in the MGI Proposal, the soil at the location must have a minimum bearing capacity of 2,500 PSI, unless otherwise stated elsewhere in this Agreement or in the appropriate attachment. If the jurisdiction in which the Building(s) are to be installed requires evidence of the bearing capacity of the soil, it shall be the sole cost and responsibility of Buyer to obtain the necessary geological and engineering studies and certifications. In the event Seller is required to alter the manner of installation because of unsuitable soil bearing or other conditions at the Location, Seller reserves the right to prepare and submit a Change Order comprised of the cost, plus overhead and profit thereon.

5. **ENGINEERING & PERMITS:** Buyer shall obtain and bear the cost of any necessary drawings, plans, inspections, approvals and building permits except to the extent expressly otherwise stated in the MGI Proposal.

6. **EXCLUDED ITEMS & ADDITIONAL EXCLUSIONS:** Unless otherwise expressly set forth in the MGI Proposal, or by Change Order, Seller shall not be responsible for any of the following items of work, even though such items of work may be necessary or attendant to the Work set forth herein: site excavation, site stake out or layout, site improvements (paving, curb and gutter, storm water management, etc.), electrical connections, plumbing connections (water and waste), gas, relocation of existing utility lines, modifications to existing structures or equipment, any drawings or specifications not otherwise included, changes or alterations which may be required by any public body or by the Buyer, or any other requirement not specifically set forth herein. Seller shall not be responsible for any undisclosed, concealed, or adverse site-related, surface, or subterranean conditions, removing rocks or other subsurface obstructions, site dewatering, and/or remediation of any hazardous or regulated substances (hereinafter “Adverse Site Conditions”). Should Seller discover any Adverse Site Conditions at the Location, Seller reserves the right to suspend performance of the Work until, in its reasonable opinion, the Adverse Site Conditions have been remediated or adequately addressed.

7. **CONTRACT SALE PRICE:** The purchase price for the delivered and installed Building(s), payment schedule, and payment terms are set forth in the MGI Proposal. Applicable taxes are excluded from the Purchase Price, unless expressly included in the Total Contract Amount stated in the MGI Proposal. Buyer shall pay, or shall reimburse Seller for, any other applicable taxes, licenses, title costs, and fees related to the Building(s), delivery, installation, and other applicable services listed herein for the Building(s). If Buyer is tax exempt or a direct payment company, Buyer shall provide Seller with a valid copy of Buyer’s tax exempt or direct payment certificate prior to Agreement execution, or such tax exemption or direct payment certification will not apply. Buyer hereby warrants and represents to Seller that it has sufficient funds approved and in place to remit payment per the payment terms and payment schedule in the MGI Proposal.

8. **FINANCE CHARGES & COLLECTION FEES** Payment in full of undisputed invoices shall be made by Buyer in accordance with the payment terms and dates stated in the MGI Proposal (each, a “Due Date”). Seller reserves the right to levy and impose upon Buyer a finance charge for all unpaid invoices after the Due Date in the amount eighteen percent (18%) per annum of the unpaid balance due and owing, calculated on a per diem basis. In addition, if Seller engages an attorney to collect the unpaid invoice/balance due, whether or not suit is filed, Buyer agrees to be responsible for, and shall pay to Seller as an additional amount due, the reasonable fees charged by such attorney as well as court costs, expert witness fees and related expenses of litigation.

9. **CHANGE ORDERS:** The parties must agree in writing to any modifications, deletions or additions to the Work covered by the Agreement, with such writing to be referred to as a “Change Order” or “Change Request” (each, a “Change Order”). It is understood that any work items, material, or labor furnished by Seller and not specifically described in this Agreement are not included in the Purchase Price and shall be deemed extra work. Prior to Seller performing any extra work, or crediting Seller for work not performed, all such changes in the Work shall be authorized by Buyer via a signed Change Order. The Change Order shall include the changes to the Scope of Work or Specification, adjustments to the Purchase Price, and/or any revisions to the project schedule. Any Change Order or Notice of Updated Project Schedule (as defined in Section 11) issued pursuant to this Agreement shall be governed by the applicable terms and conditions of this Agreement and shall be made a part hereof, unless otherwise stated. Any Change Order increasing the Purchase Price shall be paid by Buyer as a line item and billed to the Buyer in accordance with the terms set forth in the Change Order, unless no terms of payment are set forth in the Change Order, in which case Seller may invoice Buyer on a weekly or monthly progress billing basis for the work described in the Change Order. Seller shall have the right to suspend performance of the Work until such time as any necessary Change Order is executed by Buyer.

10. **TITLE:** The parties expressly agree that title to the Building(s) shall pass from Seller to Buyer only after Seller’s receipt of payment in full of the Total Contract Amount and any Change Order(s). Upon request, following such payment in full, Seller shall execute in favor of Buyer a Certificate of Origin or Bill of Sale transferring title of the Building(s) to the Buyer, free and clear from all encumbrances. Documents of title, as available to Seller, related to the Building(s) will be provided to Buyer after payment of all sums due hereunder.

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11. **ESTIMATED PERFORMANCE DATES:** Work shall commence upon full execution of this Agreement. The estimated performance dates are noted in the MGI Proposal, provided the timely receipt by Seller of submittals and other information requested by Seller. From time to time, Seller may issue and deliver by email or other means a formal written "Notice of Updated Project Schedule" to Buyer that provides a current project schedule, which shall be deemed accepted by Buyer absent written notice otherwise within three business days of delivery. Upon such Buyer acceptance, each Notice of Updated Project Schedule shall be attached and incorporated into this Agreement.

12. **DELAYS:** Seller shall not be responsible for any damages, penalties or expenses resulting, or alleged to result, from any delay in the performance of any work hereunder. The time for performance under this Agreement shall be extended in the event, or as a result, of any delay(s) due to: (i) acts or omissions of Buyer, its agents or representatives; (ii) acts of God, fires, strikes, labor disputes, lockouts, riots or civil disturbances; (iii) acts or omissions of any other contractors; (iv) inclement weather; (v) war; (vi) unavailability of materials; (vii) delays in obtaining applicable permits, licenses, approvals, tests or inspections; (viii) delays in site availability or preparation, or Buyer is otherwise not yet able to have the fabricated Building(s) delivered by Seller to the Location; (ix) delays in the overall project; (x) the discovery of any hazardous materials or unsuitable conditions at the Location; or (xi) any other cause beyond the reasonable control of Seller or its agents (each, an "Excusable Delay"). To the extent that any Excusable Delay is encountered before or during the performance of the Work, Seller's schedule of Work shall be automatically extended for both a corresponding period and an additional duration as needed to remobilize for the Work, without penalty or offset. Additionally, if an Excusable Delay postpones the Work of Seller hereunder or extends the performance dates for the Work, Seller may invoice Buyer at Seller's discretion for the remaining outstanding balance of the Total Contract Amount, which Buyer shall pay to Seller within thirty (30) days of receipt.

13. **INSPECTION & ACCEPTANCE:** Buyer or its agents shall inspect the Building(s) and Work performed hereunder within three (3) business days after notification of Substantial Completion of Work by Seller. "Substantial Completion" shall mean that a Building is ready for lawful and functional use for its stated purpose, if any, or has already been utilized or occupied by Buyer. Within five (5) business days of Substantial Completion, Buyer shall furnish a written list to Seller specifying any defects, deficiencies and/or incomplete items and the requested corrective work, if any (hereinafter "Punch List"). The Punch List work shall be timely performed, and Buyer shall not withhold any payment pending completion of the Punch List work unless otherwise agreed in writing. If Buyer does not provide a Punch List within five (5) business days following notification of Substantial Completion, it shall be conclusively determined that Buyer has inspected a Building and related work hereunder, that the Building and Work have been accepted by the Buyer, and that "Final Completion" of Work has occurred in accordance with this Agreement. "Final Completion" shall mean that the entirety of the Work performed under the Agreement pursuant to which such notification is tendered (a) has been completed in accordance with mutually agreed plan(s) and design specification(s); (b) all agreed upon punch list items have been satisfactorily completed or resolved; and (c) the Building and improvements can be lawfully occupied and/or utilized for the purposes stated, if any.

14. **WARRANTY:** For each Building purchased hereunder, Seller hereby warrants to Buyer that at the time of installation Seller has good and marketable title to the Building, free and clear of all liens and encumbrances arising by or through the Seller. Additionally, Seller warrants to the Buyer that all materials and equipment incorporated in the building under this Agreement, will be of good quality and new unless otherwise required or permitted by this Agreement, and free from material defects for a period of one (1) year from the date of Final Completion. Additionally, Seller hereby assigns to Buyer all assignable manufacturers' warranties, which shall be subject to the specific manufacturer's warranty stipulations and time period(s). During the warranty period, Seller and/or manufacturer shall repair or replace all defective parts of the Building which are covered under Manufacturer's/Seller's warranty, excluding maintenance items such as light bulbs, fuses, breakers, and HVAC filters. Seller's warranty excludes liability for defects or failures resulting from or caused by modifications not performed by Seller, abuse, improper or insufficient maintenance, improper operation, normal though excessive use, use of the Building for a purpose for which it was not intended, or other misuse. Seller may decline to perform warranty service if Buyer has not paid in full. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, SELLER DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE.**

15. **INDEMNIFICATION & RISK OF LOSS OR DAMAGE:** The Risk of Loss shall be allocated between the parties as follows: (a) during manufacturing, shipment and unloading of each Building at the Buyer's site, the Risk of Loss shall be with Seller; (b) after the unit(s) which comprise the Building are unloaded and set upon their foundation, or stored on site, as the case may be, the Risk of Loss or damage passes, on a per unit basis, to Buyer who shall be responsible for procuring any desired policy of Builder's Risk Insurance, with an A.M. Best rating of "A-" or better, to insure against perils such as loss by fire, theft, destruction by unforeseen acts or Acts of God or vandalism. In addition, Buyer shall indemnify, defend and hold Seller harmless against any penalties, fines or fees assessed or levied by any public or private governing body or regulatory agency on account of zoning violations, building code or other violations on the Property on which the Building(s) are to be located, failure to obtain any necessary authorizations to place the Building(s) at the site, violations of any applicable regulations or any other violation(s). After acceptance of each Building (as defined herein), Buyer agrees to indemnify, defend and hold Seller harmless from and against any claims, demands, damages or injuries sustained, or made by any person or entity, with regard to property damage or personal injury, including the obligation to provide a competent legal defense.

16. **INSURANCE:** While performing the Work at Buyer's site, Seller shall maintain the following minimum insurance coverage:

16.1. Commercial General Liability, with minimum limits as listed below *:

General Aggregate:	\$2,000,000.00	Products-Completed Operations Aggregate:	\$2,000,000.00
Personal & Advertising Injury:	\$1,000,000.00	Each Occurrence:	\$1,000,000.00

* Buyer shall be included as an additional insured on the insurance Certificate, when required.

16.2. Business Auto Liability Coverage with combined single limit of \$1,000,000 covering non-owned and hired autos.

16.3. Excess Liability (Umbrella Coverage), with minimum limits as listed below:

Umbrella Each Occurrence:	\$2,000,000.00	Umbrella Aggregate:	\$2,000,000.00
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16.4. Workers Compensation & Employer's Liability of \$1,000,000.00 for each occurrence, Disease – Policy Limit of \$1,000,000.00 and Disease – Each Employee of \$1,000,000.00.

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16.5. Upon Buyer's request, Seller shall furnish evidence of insurance to Buyer, stating the above minimum limits of coverage, on the Standard Acord Form, prior to commencement of any Work by Seller at the site.

17. **DEFAULT BY BUYER:** If Buyer fails to comply with any of its obligations, terms or conditions herein, such failure shall constitute a default (hereinafter "Default"). Upon the occurrence of a Default, after five (5) calendar days written demand to cure, Seller may do one or more of the following: (i) immediately suspend the performance of Work under this Agreement; (ii) terminate this Agreement; (iii) repossess the Building(s) or any part of the Building(s) for which payment has not been made, (iv) bring an action against the Buyer for breach of this Agreement and any damages or losses due to the default, and/or (v) exercise any and all rights and remedies available at law or in equity. In the event Seller shall engage an attorney in connection with addressing or curing any Default, Buyer agrees to be responsible for the payment of all costs and expenses, including reasonable attorneys' fees, court costs and expert witness expenses, incurred in that regard.

18. **DEFAULT BY SELLER.** If the Seller defaults on its Work, following written notice to Seller and a reasonable opportunity for Seller to cure the alleged default, the Buyer hereby agrees that its damages shall be limited to the return to Buyer of any unearned amount of the Purchase Price for the affected Building. Upon the tender of the unearned portion of the Purchase Price, Seller shall have no further liability for any other damages, costs or expenses arising from the Building or Seller's default in performance under this Agreement.

19. LIABILITY LIMITATION: MGI SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY LIQUIDATED DAMAGES OR FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, LIQUIDATED, OR SPECIAL DAMAGES, COSTS, OR EXPENSES ARISING OUT OF OR RELATED TO THE AGREEMENT BETWEEN THE PARTIES. IN NO EVENT SHALL MGI'S LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT EXCEED THE TOTAL AMOUNT OF THE MGI PROPOSAL.

20. **ASSIGNMENT.** Buyer shall not assign, transfer, or pledge, or hypothecate its rights or obligations to this Agreement or any part hereof, without the prior written consent of Seller. Seller may, from time to time, collaterally assign this Agreement for the purpose of financing, or may otherwise assign this Agreement or work to be performed hereunder at Seller's discretion.

21. **MISCELLANEOUS:** This Agreement may not be terminated for convenience by Buyer and shall be binding upon the parties, their successors, and assigns. Termination for convenience by Buyer shall constitute a Default by Buyer hereunder. It is expressly agreed between the parties hereto that this is the final integrated Agreement, saving and excepting any Change Order(s), by and between them, and that no other agreements, express or implied, oral, or written, shall limit or modify the terms of this Agreement. In the event of a conflict between the terms of this Agreement and any attachments hereto, Seller shall determine which terms prevail. Any subsequent modification or additions to this Agreement must be in writing and signed by the parties hereto, and no oral representations prior or subsequent shall be binding upon the parties hereto, unless reduced to writing and signed by said parties.

21.1. **AUTHORITY TO BIND:** Each party represents and warrants that this Agreement is valid and binding, is duly authorized by appropriate actions, as required by any applicable statute, bylaws, operating agreements, or other governing documents, and that the person signing the MGI Proposal has requisite authority to bind the respective party to this Agreement.

21.2. **GOVERNING LAW AND VENUE:** The terms and conditions of this Agreement shall be governed by and according to the laws of the State of Maryland, without regard to any statutes or interpretive rules addressing conflicts in laws between differing states. The parties further agree that the venue for any dispute relating to or arising from this Agreement shall lie within the appropriate court sitting in Harford County Maryland, unless another venue shall be deemed more convenient by Seller. Additionally, Buyer hereby waives any and all defenses of sovereign immunity.