



**CURO**

MODULAR SERVICES



**TERMS & CONDITIONS**



## **1 Definitions and interpretation**

1.1 In these Conditions the following definitions apply:

- Business Day** means a day other than a Saturday, Sunday or bank or public holiday;
- Conditions** means the Supplier's terms and conditions of supply set out in this document;
- Confidential Information** means any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
- Contract** means the agreement between the Supplier and the Customer for the supply and purchase of Services incorporating these Conditions and the Order;
- Customer** means the person who purchases the Services from the Supplier and whose details are set out in the Order;
- Force Majeure** means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;
- Intellectual Property Rights** means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case:
- (a) whether registered or not;
  - (b) including any applications to protect or register such rights;
  - (c) including all renewals and extensions of such rights or applications;
  - (d) whether vested, contingent or future;
  - (e) to which the relevant party is or may be entitled, and
- in whichever part of the world existing;
- Location** means the address(es) for performance of the Services as set out in the Order;

<b>Order</b>	means the order for the Services from the Supplier placed by the Customer in substantially the same form as set out in the Customer's order form;
<b>Price</b>	has the meaning set out in clause 3.1;
<b>Services</b>	means the Services set out in the Order or understood by the parties to be included in the Services and to be performed by the Supplier for the Customer;
<b>Specification</b>	means the description or specification of the Services set out or referred to in the Order; and
<b>Supplier</b>	means Curo Modular Services
<b>VAT</b>	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Services.

1.2 In these Conditions, unless the context requires otherwise:

- 1.2.1 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.2.2 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.3 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.5 a reference to a gender includes each other gender;
- 1.2.6 words in the singular include the plural and vice versa;
- 1.2.7 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.8 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (excluding email);
- 1.2.9 a reference to legislation is a reference to that legislation as in force at the date of the Contract OR amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract; and
- 1.2.10 a reference to legislation includes all subordinate legislation made as at the date of the Contract under that legislation.

## **2 Application of these Conditions**

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Supplier.
- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase Services subject to these Conditions.
- 2.5 An Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
- 2.6 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Services shall arise, until the Supplier's written acceptance of the Order is given to the Customer.
- 2.7 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.8 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Services and are incapable of being accepted by the Customer.
- 2.9 Marketing and other promotional material relating to the Services are illustrative only and do not form part of the Contract.

## **3 Price**

- 3.1 The price for the Services shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges as advised by the Supplier before the date the Order is made.
- 3.2 The Prices are exclusive of:
  - 3.2.1 VAT (or equivalent sales tax).
- 3.3 The full price for the services must be paid by the Supplier irrespective of the final design plans being used.
- 3.4 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.5 The Supplier may increase the Prices at any time by giving the Customer not less than 14 Business Days' notice in writing provided that the increase does not exceed 5% of the Prices in effect immediately prior to the increase.

## **4 Payment**

- 4.1 Customer shall pay 30% deposit of total price before services are carried out unless otherwise agreed.

- 4.2 The Supplier will provide a monthly invoice of the remaining amount to be paid by the Customer.
- 4.3 The remaining amount is to be paid by the Customer to the Supplier to an agreed programme via a BACS payment.
- 4.4 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
  - 4.4.1 the Supplier may, without limiting its other rights, charge interest on such sums at 5% a year above the base rate of Bank of England from time to time in force, and
  - 4.4.2 interest shall accrue on a monthly basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

## **5 Performance**

- 5.1 The Services shall be deemed performed on completion of the performance of the Services as specified in the Order.
- 5.2 The Supplier may perform the Services in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.3 Each performance of the Services shall be accompanied by a performance note stating:
  - 5.3.1 the date of the Order;
  - 5.3.2 the relevant Customer and Supplier details;
  - 5.3.3 Services performed; and
  - 5.3.4 any special instructions.
- 5.4 Time of performance of the Services is not of the essence. The Supplier shall use its reasonable endeavours to meet estimated dates for performance, but any such dates are approximate only.
- 5.5 The Supplier shall not be liable for any delay in or failure of performance caused by:
  - 5.5.1 the Customer's failure to: (i) make the Location available, (ii) prepare the Location in accordance with the Supplier's instructions OR as required for performance of the Services or (iii) provide the Supplier with adequate instructions for performance;
  - 5.5.2 Force Majeure.

## **6 Pre Work Instructions**

- 6.1 Prior to any work being commenced by the Supplier the following information will need to be supplied by the customer:
  - 6.1.1 Lighting drawings;
  - 6.1.2 Small power drawings;
  - 6.1.3 Containment drawings;
  - 6.1.4 Distribution board schedules;
  - 6.1.5 Reflected ceiling plans;
  - 6.1.6 Luminaire schedules;
  - 6.1.7 Electrical specifications; and
  - 6.1.8 Any other relevant documentation.

6.2 Failure to submit any of these documents at the time of asking may result in delay in services.

## **7 Warranty**

7.1 The Supplier warrants that, for a period of three months from performance (the **Warranty Period**), the Services shall:

- 7.1.1 conform in all material respects to their description and the Specification;
- 7.1.2 be free from material defects;
- 7.1.3 be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II s 13;
- 7.1.4 be fit for purpose and any purpose held out by the Supplier and set out in the Order; and
- 7.1.5 , in the case of media on which the results of the Services are supplied, be free from defects in material and workmanship and of satisfactory quality within the meaning of the Sale of Goods Act 1979.

7.2 The Customer warrants that it has provided the Supplier with all relevant, full and accurate information as to the Customer's business and needs.

7.3 The Supplier shall, at its option, remedy, re-perform or refund the Services that do not comply with clause 7.1, provided that:

- 7.3.1 the Customer serves a written notice on the Supplier not later than five Business Days from receiving the designs or within a reasonable period of time from performance in the case of latent defects; and
- 7.3.2 such notice specifies that some or all of the Services do not comply with clause 7.1 and identifies in sufficient detail the nature and extent of the defects; and
- 7.3.3 the Customer gives the Supplier a reasonable opportunity to examine the claim of the defective Services.

7.4 The provisions of these Conditions shall apply to any Services that are remedied or re-performed with effect from performance of the remedied or re-performed Services.

7.5 Except as set out in this clause 7:

- 7.5.1 the Supplier gives no warranties and makes no representations in relation to the Services; and
- 7.5.2 shall have no liability for their failure to comply with the warranty in clause 7.1, and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

7.6 The Customer shall be entitled to exercise its rights under clause 7 notwithstanding that the Services were not rejected following any initial inspection.

## **8 Indemnity and insurance**

8.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.

8.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under these Conditions. On request, the Customer shall supply, so far as is reasonable, evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Customer shall on request assign to the Supplier the benefit of such insurance.

## **9 Limitation of liability**

9.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 9.

9.2 Subject to clauses 9.7 and 9.8, the Supplier's total liability shall not exceed the sum equalling the Price of the Services.

9.3 The Supplier shall not be liable for consequential, indirect or special losses arising from the following:

9.3.1 Use of the wrong materials from those stipulated in the design; and

9.3.2 Mismanagement of materials.

9.4 Any third parties used in conjunction with the provision of the services shall not be liable for consequential, indirect or special losses arising from the same reasons stated in clauses 9.3.1 and 9.3.2.

9.5 Subject to clause 6 the Supplier shall not be liable for consequential, indirect or special losses arising from the following:

9.5.1 Failure to provide any documents requested.

9.6 Subject to clauses 6, 9.7 and 9.8, the Supplier shall not be liable for any of the following (whether direct or indirect):

9.6.1 loss of profit;

9.6.2 loss of use;

9.6.3 loss of production;

9.6.4 loss of contract;

9.6.5 loss of opportunity;

9.6.6 loss of savings, discount or rebate (whether actual or anticipated);

9.6.7 harm to reputation or loss of goodwill.

9.7 The limitations of liability set out in clauses 9.3 to 9.6 shall not apply in respect of any indemnities given by either party under the Contract.

9.8 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:

9.8.1 death or personal injury caused by negligence;

9.8.2 fraud or fraudulent misrepresentation;

9.8.3 any other losses which cannot be excluded or limited by applicable law;

## **10 Intellectual property**

10.1 The Supplier will retain all intellectual property rights in the designs commissioned as part of the Customer's order.

- 10.2 The Supplier will licence the designs to the Customer for the purposes of manufacturing and installation of the designs.
- 10.3 In the event the rights of the Supplier are infringed by the Customer the Customer shall indemnify the Supplier in respect to any loss or damage that may be incurred.

## **11 Confidentiality**

- 11.1 The Customer shall keep confidential all Confidential Information of the Supplier and of any Affiliate of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 11.1.1 any information which was in the public domain at the date of the Contract;
  - 11.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
  - 11.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier or by any Affiliate of the Supplier; or
  - 11.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 11.2 This clause shall remain in force in perpetuity.
- 11.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

## **12 Force Majeure**

- 12.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
- 12.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
  - 12.1.2 uses best endeavours to minimise the effects of that event.
- 12.2 If, due to Force Majeure, a party:
- 12.2.1 is or shall be unable to perform a material obligation; or
  - 12.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding a total of more than 30 days in any consecutive period of 60 days;
- the parties shall, within 30 days, renegotiate the Contract to achieve, as nearly as possible, the original commercial intent.

## **13 Termination**

- 13.1 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if:
- 13.1.1 the Customer commits a material breach of Contract and such breach is not remediable;
  - 13.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
  - 13.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or



- 13.1.4 any consent, license or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 13.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 13.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 13.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
  - 13.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - 13.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 13.2.5 has a resolution passed for its winding up;
  - 13.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
  - 13.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
  - 13.2.8 has a freezing order made against it;
  - 13.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
  - 13.2.10 is subject to any events or circumstances analogous to those in clauses 13.2.1 to 13.2.9 in any jurisdiction;
- 13.3 The Supplier may terminate the Contract any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of ownership.
- 13.4 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle the Customer to terminate the Contract under this clause 13, it shall immediately notify the Customer in writing.
- 13.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

## **14 Notices**

- 14.1 Any notice or other communication given by a party under these Conditions shall:
- 14.1.1 be in writing and in English;
  - 14.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
  - 14.1.3 be sent to the relevant party at the address set out in the Contract
- 14.2 Notices may be given, and are deemed received:
- 14.2.1 by hand: on receipt of a signature at the time of delivery;
  - 14.2.2 by *Royal Mail Recorded Signed For* post: at 9.00 am on the *second* Business Day after posting;



14.2.3 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; OR .

14.2.4 by email: on receipt of a delivery email from the correct address.

14.3 All references to time are to the local time at the place of deemed receipt.

14.4 This clause does not apply to notices given in legal proceedings or arbitration.

## **15 Time**

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

## **16 Entire agreement**

16.1 The parties agree that the written Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

16.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

## **17 Variation**

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, the Supplier.

## **18 Assignment**

18.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, such consent not to be unreasonably withheld or delayed.

## **19 Set off**

19.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract. The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

## **20 Severance**

20.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

20.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

## **21 Waiver**

- 21.1 No failure, delay or omission by the Contract in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 21.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.
- 21.3 A waiver of any term, provision, condition or breach of the Contract by the Supplier shall only be effective if given in writing and signed by the Supplier, and then only in the instance and for the purpose for which it is given.

## **22 Compliance with law**

The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

## **23 Conflicts within contract**

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail.

## **24 Costs and expenses**

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

## **25 Jurisdiction**

The parties irrevocably agree that the courts of England and Wales shall have exclusive to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

## **26 Dispute resolution**

- 26.1 No claims shall be brought regarding any dispute or complaint unless made in writing within 7 Business Days of the cause of the complaint or dispute.
- 26.2 The party receiving notice of a complaint of dispute should acknowledge receipt of the complaint or dispute within 7 Business Days. The receiving party will then have 28 Calendar days to in which to respond to the notice of the complaint or dispute. If the dispute or complaint is not resolved after this point than both parties shall meet in order to resolve the matter within 14 Business Days of the written response.
- 26.3 In the event of any dispute or complaint arising out of or in connection with this Agreement that is likely to exceed sum of **£10,000 in damages**, including any question regarding its existence, validity or termination, the parties shall seek to settle that dispute by mediation in accordance with the London Court of International Arbitration Mediation Procedure (the Procedure), with which the Procedure is deemed to be incorporated by reference into this Agreement.



THE SCHEDULE

**Date:**

**Customer:**

Name:

Address:

Contact:

**Supplier**

Name: Curo Modular Services

Address: North East BIC, Wearfield, Enterprise Park East, Sunderland SR5 2TA

Contact: 0191 516 6036

**Services**

[Large empty rectangular box for service details, overlaid with a large, faint, light-green stylized 'G' watermark.]

Proposed performance period:

**The Customer has read and accepts the Order and Contract subject to the Conditions [above OR overleaf].**

**Signed by or on behalf of the Customer**

**Business:** .....

**Date:** .....

**Name:** .....

**Position:** .....

**Signed by or on behalf of the Supplier**

**Business:** .....

**Date:** .....

**Name:** .....

**Position:** .....