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**MAKE:Modular – Terms of Reference**

**(May 2022)**

#### DEFINITIONS

1. The following definitions apply in these rules:

* " **MAKE UK”:** MeansEEF Limited (registered number 05950172) a company limited by guarantee and covers all brands within the MAKE UK family.
* “**MAKE:MODULAR”:** Special interest group representing those companies operating within the modular housing construction sector and other similar adjacent sectors.
* **“MAKE:MODULAR Committee”:** Committee comprising of MAKE:MODULAR Members and MAKE UK management and personnel, as determined from time to time.

## RULES

1. These rules prescribe the operating methods for MAKE:Modular. These rules may be amended, varied or rescinded in whole or in part by EEF Ltd Corporate Board after consulting the MAKE:Modular Committee.

## OBJECTIVES

1. The objectives of the MAKE:Modular are to:
   1. Promote and serve the interests of MAKE:Modular Members in matters that affect their businesses in the manufacture (et al) of modular housing products
   2. Provide an efficient and economical service to further those interests.
   3. Represent MAKE:Modular members in discussions, negotiations and enquiries on all pertinent matters with any Government, Government Department or International body or organisation, any State Trading Corporation, entity or other public authority (or with any subsidiary part of such bodies) or any other person, Corporation or Association.
   4. Promote the sales, at home and abroad, of modular housing products made or distributed by MAKE:Modular Members, assist in developing uses and markets for them, increase the technical efficiency of and co-operation between Members, including the support of research and development and collaborate with or be a member of any commercial, technical, research or economic organisation.
   5. Define the policy priorities and related issues that define the industry and its context, agree them with the MAKE:Modular Policy and Operations Committee and promote them with key public and private bodies, stakeholders and the media
   6. Through this, seek to increase the awareness of and commitment to modular housing as a high quality, efficient and sustainable solution to the housing needs of the UK and elsewhere
   7. Ensure that any policy or other activity is conducted in a way that is consistent with the activities and priorities of MAKE UK and its members

## STRUCTURES

1. MAKE:Modular shall comprise:

* MAKE:Modular Members
* MAKE:Modular Committee
* Professional Support Staff – comprising a mixture of dedicated MAKE:Modular resource as well as access to wider MAKE UK resource and expertise (including but not limited to economists, media specialists and national membership staff).

1. The CEO and Executive Director of Policy and Engagement will sit on the MAKE:Modular Committee. The Chair of the MAKE:Modular Committee will sit on the MAKE UK National Membership Board. The MAKE:Modular Committee will be able to nominate a representative(s) to sit on MAKE UK policy committee(s) covering areas such as economics, health and safety and technology.

**MAKE:MODULAR MEMBERS**

1. Founder members will be made up of those companies that are signatories to the initial contract with MAKE UK. Future members, who will be admitted at the discretion of MAKE UK and the MAKE:Modular Committee must be - or wholly own - companies engaged in the design, manufacture and supply of modular housing products and associated goods and services or provide critical support products or services used extensively across the industry
2. For the purposes of these rules and any subsequent admissions, the MAKE:Modular Committee will provide a definition of what constitutes: “the design, manufacture and supply of modular housing products and associated goods and services”, will review this annually and update it in line with changes to the industry or wider economy.

## FINANCE AND FEES

1. The activities of MAKE:Modular shall be funded by fees paid by all Members. The amount of these fees shall normally be agreed by the MAKE:Modular Committee following the submission of an annual proposal by MAKE UK covering the ambition and costs for the following year of operation.
2. Fees will always be for a minimum of 12 months. Longer term commitments may be entered into where mutually agreeable by the MAKE:Modular Policy and Operations Committee and MAKE UK
3. All fees must be paid forthwith on receiving notice from MAKE UK and settled within 28 days. Where any MAKE:Modular Member has, after a reasonable time, failed to comply with such notice, the details shall be reported to the MAKE:Modular Committee, which may, in its absolute discretion, consider and decide upon the suspension or termination of that member’s rights and privileges.
4. Any shortfall in income against the agreed annual proposal and any other previously approved expenditure will be met jointly and severally by other MAKE:Modular members
5. Any MAKE:Modular Member who wishes to resign their membership shall do so by giving not less than six months' notice in writing to MAKE UK and shall continue during the notice period to pay all Levies for which that Member is responsible.

**CHAIR, VICE-CHAIR AND FREQUENCY OF COMMITTEE MEETINGS**

1. There will be a Chair and a Vice-Chair of the MAKE:Modular Committee; the Vice-Chair would normally succeed to become Chair for a two year term.
2. In the event of there being a casual vacancy, such vacancy may be filled by the MAKE:Modular Committee.
3. The Chair shall take the chair at all meetings of the MAKE:Modular Committee or deputise the Vice-Chair to do so on their behalf. In the absence of both the Chair and Vice-Chair any meeting of the MAKE:Modular Committee will not be deemed quorate
4. The MAKE:Modular Committee will normally meet four times a year (quarterly) to oversee the management of MAKE:Modular business. Ad-hoc meetings may be called as necessary should there need to be decision taken on a pressing policy or operational matter. In the event of a significant or critical issue, an emergency general meeting may be called by the Chair, subject to the criteria set out below.
5. Meetings of the MAKE:Modular Committee will be deemed quorate when this minimum attendance has been reached:

* The Chair (or Vice Chair where it has been previously agreed that they will chair the meeting)
* Excluding the Chair of the meeting, at least 50% of the MAKE:Modular member companies are represented
* MAKE UK’s CEO or Executive Director of Policy and Engagement or equivalent deputy

1. One meeting in every calendar year will be deemed the annual general meeting at which MAKE UK will present a proposal for the year ahead and associated costings. This will set out the financial obligations upon members, and an annual performance plan to underpin it.
2. All decisions of the MAKE:Modular Committee will be subject to a vote. Decisions taken at a quarterly meeting or the AGM will require a simple majority of those present, provided the meeting is quorate. Specific terms for emergency general meetings are set out below.
3. The Chair will normally represent MAKE:Modular at the MAKE UK National Membership Board and exercise its voting rights when doing so. Attendance at the MAKE UK National Membership Board would normally be delegate to the Vice Chair where necessary or the MAKE:Modular Committee can nominate another member should both the Chair and Vice Chair be unavailable.

**COMPOSITION OF THE MAKE:MODULAR COMMITTEE**

1. The MAKE:Modular Committee will comprise a Chair and Vice Chair (see above) and Members. The MAKE UK CEO, Executive Director of Policy and Engagement and the professional support staff would routinely attend the entirety of all meetings, other than those elements where the committee is reviewing the annual proposal or where it might otherwise constitute a conflict of interest.
2. The Committee Chair, Vice Chair and Members will be drawn from those companies paying the annual membership fees. Each fee paying firm has one vote and the right to one invitation to their company. The expectation is that the invitation would normally be held by an individual for a term of at least two years and that the post holder would be of seniority equivalent to Chair, CEO or Company Director enabled with sufficient authority from the levy paying company to exercise their voting mandate and enter into binding financial and other commitments on behalf of the MAKE:Modular member company.
3. Where the nominated and regular attendee is unavailable, suitably empowered alternates may be permitted at the discretion of the Chair.
4. The Chair may also invite additional representatives from MAKE:Modular member companies alongside other appropriate guests, where the order of business requires it. Such attendees will not have voting rights nor have the ability to enter their organisations into binding commitments.
5. All member companies will be invited to attend the MAKE:Modular Operations Board, subject to membership numbers remaining at or below 20. Should that limit be exceeded, the Operations Board would agree mechanisms for the selection of 20 Board members from the membership. However, all companies would have the right of attendance and vote at the annual general meeting.
6. The MAKE:Modular Committee shall have the ability to co-opt individuals to attend the Board (such as academics, Government officials, or companies from sectors with a relevant interest, for example) but these attendees will not have voting rights. Should such arrangements have enough depth and duration, these might be deemed “associate members” subject to the agreement of the committee
7. The MAKE:Modular Committee can establish sub-committees or special interest groups as they see fit and determine the nature and frequency of engagement. In doing so however, the committee will first engage with MAKE UK to determine if the ambitions for these groups might be served through membership of an existing MAKE UK policy group so as to encourage partnership and minimise duplication of effort. However, the ultimate decision remains that of the MAKE:Modular Committee

**EMERGENCY GENERAL MEETING**

1. The MAKE:Modular Committee may at its sole discretion decide to call an emergency general meeting of all MAKE:Modular Members. An emergency general meeting shall only be called to decide on issues of major strategic importance to the future of MAKE:Modular. At least three weeks’ notice of an emergency general meeting must be given. Such notice shall include sufficient information on the issue to be discussed to enable Members to reach a reasoned decision. No matters other than those described in the notice of the meeting may be decided by an emergency general meeting.
2. An emergency general meeting shall only be quorate if MAKE:Modular Members paying at least 75% of the fees during the year in which the meeting is to be held are present. At least one of the MAKE UK senior attendees must also be present to meet this threshold.
3. MAKE:Modular Members shall be eligible to vote at a general meeting if their fees are fully paid up and if either they are represented in person at the meeting or they have mandated their vote in writing to a proxy in a form and manner to be jointly prescribed by the CEO of MAKE UK and the Chair of the Committee
4. A decision taken at an emergency general meeting shall be binding if at least 75% of the votes cast are in favour.

**COMPETITION LAW COMPLIANCE GUIDELINES**

1. MAKE UK provides forums for our members and the members of its wholly owned specialist trade associations to meet and to discuss common issues. Activities conducted within MAKE UK meetings and those of such specialist trade associations are, however, also subject to the competition rules and those taking part need to guard against the risk that such activities may breach competition law.
2. The detail set out below is the standard requirements that MAKE UK mandate for all such meetings and gatherings. Agreement to these terms of reference by MAKE:Modular members includes the explicit agreement to adhere to these guidelines and any subsequent amendments or replacements that MAKE UK deems necessary. MAKE UK will provide the current terms at each MAKE:Modular Committee AGM and will advise the Chair of that committee should there be and significant changes prior to the next AGM.
3. The relevant text which MAKE:Modular members agree to follow is:

*“MAKE UK committees must avoid any type of conduct that would have the purpose or the effect of restricting competition on the market. In particular, discussions within committees must not amount to, nor lead to, coordination with regard to any of the following: prices; any component of price or other factors with price relevance; market share; production, output or delivery quotas; capacity utilisation; sharing of geographical markets, customers or customer groups; investments or closures; or production programs. Discussions related to these topics are not permitted, regardless of the underlying motive.*

*This document sets out the basic principles of the UK Competition Act, MAKE UK’s policy and seeks to give guidance on how to stay on the right side of competition law.*

*The Law*

*In short, the UK Competition Act 1998 prohibits:*

*“Agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the United Kingdom and have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom.”*

*Article 101 of the EU Treaty, which is in almost identical terms, prohibits such arrangements where they affect trade between EU member states.*

*The Act also prohibits some so-called “vertical” agreements, for example where a manufacturer seeks to set the resale price at which its dealer can sell (ie it prohibits resale price maintenance). The Act extends to exchange of confidential information between competitors as well as to agreements themselves, especially where the information exchanged relates to prices charged, particular customers to whom sales have been made and the terms of such sales. Exchange of information as to costs can also be caught. The Act also catches non-binding, “gentlemen’s” agreements. The term “agreement” also includes a Trade Association’s governing documents and extends to recommendations made by a Trade Association to its members.*

*Companies found to be in breach can be heavily fined. Under a separate law, “hardcore” cartels practices, such as price fixing or collusive tendering (bid rigging) also expose individual directors and senior executives of companies involved to the risk of serious criminal sanctions which will not limited to fines (Enterprise Act 2002).*

*MAKE UK Policy*

*MAKE UK is not responsible for the competition law infringements of its members.*

*MAKE UK will not support, assist or become involved in any such conduct by its members. MAKE UK strives to ensure that no meetings of members organised or supported by MAKE UK are ever used to discuss or coordinate future market behaviour resulting in a restriction of competition. More generally, the platform offered by MAKE UK to its members should not be misused for activities prohibited by competition law.*

*The presence of a MAKE UK representative is therefore essential during MAKE UK meetings. No MAKE UK committee meetings are permitted without the presence of a MAKE UK member of staff.*

*A written invitation must be sent together with a detailed agenda to participants at each MAKE UK meeting. Discussions during meetings should reflect the agenda. Minutes of each meeting should be drafted accurately and comprehensively to reflect the discussions that took place at the meeting.*

*MAKE UK staff as well as chairpersons and anyone attending MAKE UK meetings are under a duty to ensure strict adherence to the competition rules. At all meetings, the MAKE UK representative and the chairperson must recognise situations where competition issues may arise. They must immediately react to potentially inappropriate discussions by intervening with suitable guidance (i.e. indicating that such discussion is not appropriate in MAKE UK meetings) and by bringing the potentially illegal conduct immediately to an end. Where this cannot be achieved, the MAKE UK representative should leave and the chairperson must end the meeting. This must be recorded in the minutes of the meeting concerned.*

*MAKE UK seeks to avoid, and urges its members to avoid, any language that could be misinterpreted. Past cases show that ill-advised statements or unclear notes or documents can be misconstrued by competition enforcement agencies as effecting collusion. Such statements can put Trade Associations at risk of being prosecuted no matter what the underlying reality is. This could apply to MAKE UK despite its strong commitment to competition law compliance. Any comment, note, email or other type of correspondence should be carefully reviewed from this perspective before being made by any member.*

*Nothing in these Guidelines are intended to discourage membership of or participation at MAKE UK activities. The opposite is true. MAKE UK has adopted these Guidelines in order that its members can feel comfortable lawfully attending. Please do feel free to ask questions about the scope and application of these Guidelines. Your support helps us ensure that MAKE UK’s activities are conducted in compliance with the law.*

**ACCEPTANCE**

1. We agree to accept the terms of the foregoing Rules, the Terms and Conditions and to the fee of £30,000.00 plus VAT for twelve months membership.

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| For and on behalf: | |  |
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| Signed: |  | |
| Position: |  | |
| Date: |  | |
| Print Name: |  | |
| Address: |  | |
|  | |
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| Postcode: |  | |
| Email: |  | |
| Telephone: |  | |
| Mobile: |  | |

**(The signature must be that of a Director, Secretary or Partner, as appropriate.**)

**Appendix A – Key information. Please provide**

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| --- | --- |
| Company Name |  |
| Address |  |
| Postcode |  |
| Telephone |  |
| Co. Registration No. |  |
| Head Count |  |
| Number of category 1 modular homes delivered in previous financial year |  |
| Number of category 1 modular homes projected to be delivered in current financial year |  |
| Maximum existing annual production capacity of category 1 modular homes |  |