

# Terms and Conditions



## 1. General

- 1.1 The following terms and conditions apply to all orders placed with and goods and services supplied by Moda Systems NZ Limited (**Moda**).
- 1.2 Moda may alter or replace these terms and conditions from time to time by posting amended/new terms on Moda's website. All orders placed subsequently by the Customer shall be upon the altered or replaced terms and conditions.
- 1.3 In these terms:

"**Customer**" means the entity ordering goods or services from Moda.

"**Working Day**" means any day other than a Saturday, Sunday or public holiday in Auckland, New Zealand and shall commence at 9am and end at 5pm.

## 2. Prices and Orders

- 2.1 Moda's prices are as set out in Moda's price list which is current at the date of the order or as set out in any written quotation.
- 2.2 Quotations may be withdrawn by Moda at any time prior to acceptance.
- 2.3 All prices are exclusive of GST and any other taxes or duties, insurance, freight, storage and handling charges in relation to the sale and delivery of the goods or services unless otherwise stated.
- 2.4 The Customer shall pay GST and any other taxes and duties, insurance, freight, storage and handling charges in addition to the price.
- 2.5 No order shall be binding on Moda until accepted in writing by Moda.
- 2.6 Orders, once accepted by Moda, may not be cancelled.
- 2.7 Moda will not be bound by clerical errors or omissions whether in computation or otherwise in any quotation, acknowledgment or invoice and the same shall be subject to correction.

## 3. Payment

- 3.1 Unless otherwise agreed in writing, payment for goods and services shall be made by the Customer for:
  - 3.1.1 Goods:
    - (a) 50% on acceptance of the order by Moda,
    - (b) 40% on Moda advising the order is available for collection; and
    - (c) 10% on commissioning of the Product at the Customer's site; and
  - 3.1.2 Services - within 5 Working Days of completion of the services.
- 3.2 All payments are to be made without deduction or set off to the account nominated by Moda from time to time.
- 3.3 Where any payment is not made on the due date, without prejudice to any other rights or remedies available to Moda under these terms and conditions or at law or in equity or otherwise, Moda may:
  - 3.3.1 Charge interest, by way of liquidated damages, on all overdue accounts at the rate of 2% per month calculated on a daily basis from the date on which payment was due until payment is made;
  - 3.3.2 Withhold deliveries or cancel undelivered orders or portions of such orders, retain as liquidated damages any moneys paid by the Customer and sue the Customer for damages;
  - 3.3.3 Cancel any other order or contract or arrangement between Moda and the Customer or suspend the performance of such order, contract or arrangement pending payment without being liable to the Customer for any losses of any kind that it might suffer.
- 3.4 The Customer shall upon demand reimburse Moda for all costs (including legal costs on a solicitor/client basis), expenses or other sums incurred by Moda in the recovery of the moneys due and/or the goods, which sum shall also carry interest at the rate specified in clause 3.3(a) if unpaid within one calendar month of demand having been made.
- 3.5 Moda shall be entitled to apply or appropriate any payments to any account of the Customer. Should the Customer have a number of accounts Moda may combine any accounts and offset any amount between accounts.
- 3.6 Moda reserves the right to impose a credit limit at any time, which may be altered or withdrawn at Moda's discretion with effect from the date that Moda notifies the Customer of such change.

- 3.7 If at any time it deems the credit of the Customer to be unsatisfactory Moda may require security for payment and may suspend performance of its obligations under any order until the provision of sufficient security. All costs and expenses of, or incurred by, Moda as a result of such suspension and any recommencement shall be payable by the Customer upon demand.

## 4. Collection of Goods/Provision of Services

- 4.1 Moda will use all reasonable endeavours to have the goods available for delivery or provide the services at the time requested by the Customer but will not be responsible for any loss or damage (in either case, of any kind and whether direct, indirect or consequential) arising from any delay in the delivery of the goods or provision of the services from any cause whatsoever nor shall any such delay entitle the Customer to cancel any order or refuse to accept delivery at any time or refuse or delay payment for the goods or services.
- 4.2 The Customer shall make all necessary arrangements to collect the goods, at the Customer's cost, within 5 Working Days of receipt of advice from Moda that the goods are available for collection. Collection must take place on a Working Day.
- 4.3 If the Customer does not collect the goods within the timeframe required by clause 4.2, the Customer shall be deemed to have taken delivery of the goods, shall be responsible for insurance of the goods and shall pay Moda reasonable storage charges for the period that the goods remain in Moda's premises.

## 5. Risk and Ownership

- 5.1 Risk in any goods supplied by Moda to the Customer shall pass to the Customer when the goods leave Moda's premises unless otherwise agreed in writing.
- 5.2 The Customer must check all goods prior to collection/removal from Moda's premises.
- 5.3 Title to and ownership of the goods shall not pass to the Customer until all moneys payable to Moda (whether for the goods or otherwise) have been paid by the Customer in full. Until title in the goods passes to the Customer, the Customer must:
  - 5.3.1 Keep the goods in a good and secure condition;
  - 5.3.2 Not obliterate, damage or obscure any labels or other identifying marks applied to the goods by or on behalf of Moda;
  - 5.3.3 Keep the goods fully insured to their full replacement value against all risks;
  - 5.3.4 Not encumber the goods in any way;
  - 5.3.5 Hold and keep the goods separately from other property in the possession of the Customer (including goods already supplied by Moda) and in a manner which enables the goods to be easily identifiable as goods supplied by Moda.
- 5.4 Moda shall be entitled to repossess all goods which it claims belongs to it at any time without notice and for such purpose it shall be lawful for Moda and/or its agent to enter any premises where such goods are or are believed to be and to remove such goods. The Customer hereby indemnifies and agrees to hold harmless Moda against any damage howsoever caused in relation to such entry and removal including consequential loss or damage to any third party or to the Customer.

## 6. Personal Property Securities Act 1999

- 6.1 The Customer acknowledges that Moda holds a "security interest" in the goods and any proceeds of the sale of the goods pursuant to Section 17 of the Personal Property Securities Act 1999 (**the PPSA**) and that Moda may register a financing statement in respect of the goods and any sale proceeds in accordance with the provisions of the PPSA.
- 6.2 The Customer shall provide all information, execute or arrange for execution of all documents and do all other things that Moda may require to ensure that Moda has a perfected first ranking security interest in the goods under the PPSA. The Customer shall immediately upon request by Moda, procure from any person considered by Moda to be relevant to its security position such agreements and waivers as Moda may at any time require.
- 6.3 The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by Moda under the PPSA and agrees that as between Moda and the Customer, the Customer shall have no rights under (or by

reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA and where Moda has rights in addition to those in part 9 of the PPSA, those rights shall continue to apply.

- 6.4 The Customer shall immediately notify Moda of any change in the Customer's name, address details and any other information provided to Moda to enable Moda to register a financing change statement if required.

## 7. Defects

- 7.1 Claims for non-conforming or defective goods and services, will only be accepted by Moda if the non-conformance/defect was not able to be discovered prior to collection of the goods or on completion of the service and the Customer has advised Moda of the non-conformance / defect within 5 Working Days of becoming aware of it.
- 7.2 If the Customer fails to comply with the timeframes in this clause the goods and/or services shall be deemed to be defect free.
- 7.3 All claims must be in writing and specify full details of the non-conformance or defect with evidence to enable Moda to assess the claim.
- 7.4 Moda shall be entitled to undertake an investigation to establish the cause of the non-conformance or defect and the Customer shall provide Moda with all reasonable access and assistance to enable Moda to complete its investigation.
- 7.5 Where Moda determines that the non-conformance/defect arises from a defect which Moda is liable to fix, Moda's total responsibility and liability to the Customer shall be to fix the non-conformance/defect (if it is able) or refund the purchase price to the Customer. If Moda elects to provide a refund, the Customer shall make the goods available to Moda to collect at Moda's cost.

## 8. Warranties and Liabilities

- 8.1 Moda warrants that the goods will meet the specifications set out in writing by Moda for a period of 12 months from the date of delivery. This is the sole warranty provided by Moda.
- 8.2 Moda shall, to the extent that it is able, assign all manufacturers warranties to the Customer including the 10 year structural warranty and the 10 year Bradley Rockwell electrical warranty.
- 8.3 Save for any warranties provided or assigned under clause 8, Moda makes no representation and gives no assurance, condition or warranty of any kind to the Customer (including any assurance, condition or warranty implied by law to the extent that the assurance, condition or warranty can be excluded) in relation to the goods and services and accepts no liability for any assurance, condition, warranty, representation, statement or term not expressly set out in these terms and conditions.
- 8.4 The Customer specifically acknowledges that it is acquiring the goods and services for business purposes and the provisions of the Consumer Guarantees Act 1993 are excluded.
- 8.5 The benefit of any warranties and conditions conferred by Moda on the Customer are personal to the Customer and are not assignable.
- 8.6 Moda shall not be liable to the Customer or any other person for any indirect or consequential loss or damage of any kind arising out of defective goods or any breach by the Company of its warranties or conditions or obligations under these terms and conditions or negligence or otherwise. Regardless of the legal basis of any claim, Moda's maximum liability to the Customer under any circumstances is limited to a sum not exceeding the invoiced value of the goods or services in relation to which the claim relates.

## 9. Guarantee

- 9.1 Moda reserves the right to require a personal guarantee in relation to obligations of the Customer to Moda.
- 9.2 Where a person or entity has signed these terms as a guarantor (**Guarantor**), the Guarantor agrees that in consideration of Moda providing goods and services to the Customer, the Guarantor guarantees in favour of Moda performance of all of the obligations due by the Customer to Moda including, but not limited to, the due and punctual payment of all monies due to Moda.
- 9.3 The Guarantor agrees that: The Guarantor is a principal debtor; the guarantee is a continuing guarantee; the granting by Moda of any credit extensions, time extensions, waiver of any obligations, release of any security held, any indulgence given to the Customer and/or the liquidation of the Customer does not affect nor release the Guarantor's liability under the guarantee.

- 9.4 If the guarantee is called upon, the Guarantor will remedy any breach by the Customer, including paying any money due to Moda within 5 Working Days of the date of demand by Moda.

## 10. Information and Privacy

- 10.1 The Customer authorises Moda to make credit enquires about the Customer of any third party.
- 10.2 The Customer authorises all such third parties to respond fully to all credit enquires made by Moda and to provide all information about the Customer as requested by Moda. The Customer waives any claims against those third parties for provision of such information.
- 10.3 The Customer authorises Moda to hold, collect and use information about the Customer for the purposes of assessing the Customer's credit worthiness, enforcing any rights against the Customer, marketing Moda's goods and services and to supply that information to any credit reporting agency or to any person to facilitate collection of debts from the Customer.
- 10.4 The information collected by Moda will be held securely at Moda's offices. The information will be accessible to any of the Moda's employees and agents who need access to it for the administration of Moda's business.
- 10.5 The Customer may request access to and correction of any information about the Customer held by Moda at any time. Moda may charge reasonable costs for providing access to that information.

## 11. Intellectual Property

- 11.1 The Customer acknowledges that the goods supplied by Moda contain intellectual property which belongs to Moda.
- 11.2 The Customer shall not do anything that may interfere with those intellectual property rights and shall not reverse engineer, decompile or copy any goods.

## 12. Dispute Resolution

- 12.1 Where there is any dispute arising between the Customer and Moda in relation to these terms and conditions or any goods or services supplied by Moda, the parties shall use all reasonable endeavours to settle the dispute.
- 12.2 If Customer and Moda are unable to settle any dispute within 10 Working Days of either party first raising the dispute with the other, then either party may refer the matter to be determined by arbitration in front of a single arbitrator. If the parties are unable to agree on an arbitrator within 5 Working Days, either party may elect to have the president of the New Zealand Law Society or his nominee appoint the arbitrator. The arbitrator's decision shall be final and binding.

## 13. Miscellaneous

- 13.1 Moda shall not be deemed to have waived or varied any provision of these terms and conditions or any right or remedy which it may have under these terms and conditions or at law or in equity or otherwise unless the waiver or variation is in writing signed by Moda. No waiver of a breach shall be deemed to be a waiver of any other breach or any further breach.
- 13.2 The Customer shall not assign all or any of its rights or obligations under these terms and conditions.
- 13.3 Moda shall not be responsible to the Customer for failure to perform any of its obligations due to causes beyond its control including work stoppages, fires, civil disobedience, riots, rebellions, wars, acts of God and similar occurrences. In such circumstances Moda shall have the right at its discretion to delay the performance of its obligations until such causes cease or to cancel the whole or any part of any order without incurring any liability to the Customer.
- 13.4 In the event of any conflict between the terms of any quotation or order confirmation and these terms and conditions, the express provisions contained in the quotation or order confirmation, as the case may be, shall prevail. These terms and conditions shall prevail over the Customer's terms and conditions (if any).
- 13.5 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.6 These Terms and Conditions are governed by the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the New Zealand Courts.