

Modcom Conditions of Hire

1. Definitions

In these conditions:

- 1.1 "Contract" has the meaning set out in clause 2.2.
- 1.2 "Goods" means portable modular buildings, blocks, braces, accessories and parts or other goods provided by the Owner to the Hirer in relation to such portable modular buildings, including the provision of associated building products, as described in further detail on the cover sheet to these terms.
- 1.3 "Hirer" is the person entering into the Contract and where that person enters into this Contract on behalf of another entity the expression includes such entity. Where the context requires, this expression also extends to the agents, employees and invitees of the Hirer and those claiming under or authorised by the Hirer.
- 1.4 "Owner" means Mod Com Portable Buildings Limited trading under the name "Modcom", and includes its successors and assigns.

2. Acceptance

- 2.1 All orders are subject to acceptance by the Owner. Any order will only be on these terms.
- 2.2 These terms, the cover sheet to these terms, any orders or other documents or statements accepted by the Owner describing the Goods, and the provisions of any credit application, form the agreement of hire between the Owner and the Hirer ("Contract"). By signing the cover sheet to these terms (or if no cover sheet is used, by placing an order), the Hirer confirms its acceptance of the Contract.

3. Quotes

- 3.1 Where a quotation is given by the Owner:
 - (a) the quotation shall be valid for 20 working days from the date of issue unless withdrawn earlier by the Owner;
 - (b) the quotation shall be exclusive of Goods and Services Tax and transport costs; and
 - (c) the quotation is subject to change in the event that there is an increase in the Owner's building/installation costs subsequent to the issue of the quotation.
- 3.2 Where Goods are required in addition to those covered by the quotation, the Hirer agrees to pay for the additional cost of such Goods.

4. Hire Period

- 4.1 Hiring charges shall commence from the time that the Goods are delivered in accordance with clause 7, and shall continue until the Goods are returned to the Owner's possession or until the expiry of the minimum hire period, whichever occurs latest.
- 4.2 The minimum period of hire (except only in those cases where a specific different written agreement is reached between the parties) shall be a period of one month.

5. Hire Rates and Payment

- 5.1 The Goods are hired at the rate(s), and subject to the additional costs, indicated on the cover sheet, or if no rate and/or costs are indicated, at the rate and/or costs specified by the Owner. Unless there is a written agreement to the contrary between the Owner and the Hirer, the hire rate does not include saleable and consumable items, which may be charged over and above the hire rate. The Owner reserves the right to revise its charges on one month's notice to the Hirer, to reflect changes in its own supply costs or other similar circumstances outside of its control.
- 5.2 Except where the Owner dispenses with this requirement a deposit of one month's rent in advance, plus up-front transport costs, shall be paid or given at the commencement of the hire period. A bond may also be payable, if notified by the Owner, in its sole discretion. The Owner may deduct from or set-off against any deposit or bond any amount due to the Owner including in respect of the hire of Goods.
- 5.3 Payment of hire and other charges shall be made calendar monthly in advance, on the first day of the month, or alternatively in full at the time of delivery.
- 5.4 The Owner may, as a condition of hiring Goods, require the Hirer to procure a third party guarantee of the obligations of the Hirer or provide security for payments under this contract and the Owner may withhold or withdraw the Goods notice if such guarantee or security is not provided.
- 5.5 Without limiting the other rights and remedies of the Owner, in the event of default by the Hirer in the payment of any amount due the Hirer shall be liable for interest on the gross amount outstanding at the rate of 2.5% per month from the date on which payment is due until the date on which payment is received in full.
- 5.6 Unless otherwise specified all hire rates shall be GST exclusive. GST is to be paid by the Hirer in addition to the rates specified and at the time for payment of the hire charges.
- 5.7 The Hirer may not withhold payment or make deduction or set-off from any payment under this Contract.
- 5.8 In the event that the Hirer disputes a portion of an invoice received from the Owner, the Hirer must pay the undisputed portion and the disputed portion will be resolved in accordance with clause 14.
- 5.9 Where delivery, installation, relocation and/or removal of the Goods is more complex than was made known to the Owner by the Hirer, the Owner may increase the charges by a reasonable amount to account for any additional work arising from such complexity.

6. Warranties by Hirer

- 6.1 The Hirer warrants that:
 - (a) It has provided and will provide the Owner with all information and assistance relevant to the carrying out of the supply of the Goods;
 - (b) It has obtained all necessary consents and/or licences from the relevant local authority or other competent authority in respect of the delivery and use of the Goods and has provided the Owner with any associated information that may be relevant to it;
 - (c) It will clearly designate areas of installation/building work required (prior to delivery and installation), and will point out any hazards or other items for anyone effecting the delivery to be aware of;
 - (d) It irrevocably authorises the Owner to enter and to bring its vehicles onto the Hirer's property (or any property within the Hirer's control) for the purposes of delivering, relocating, inspecting and removing the Goods (as applicable);
 - (e) It has located, marked and advised the Owner of all gas pipes, water pipes, sewage lines, drainage lines, telephone cabling, and other utilities that are on, or near, or adjacent to the land upon which any supply is to proceed;
 - (f) It has provided suitable vehicle access for delivery, relocation or removal of the Goods within 20 metres of the installation site;
 - (g) The installation site is clear, level, free of impediment, and has uninterrupted access for machinery and labour;
 - (h) The Goods will be firmly fixed to foundations or securely anchored to the ground. Where a portable building will be placed on a concrete floor, such floor will be appropriate to be used as a base for that building having regard to its quality, texture and depth; and
 - (i) The Goods are to remain as chattels and the Hirer shall not allow the Goods to be affixed to land or property without the Owner's prior written approval.

7. Delivery, Relocation and Removal

- 7.1 Delivery shall occur when the Hirer takes physical possession of the Goods.
- 7.2 The Owner shall not be responsible for any delay in delivery that is outside of its control
- 7.3 Any relocation of the Goods which does not form part of the Contract will incur further cost. If the Hirer requires Goods to be relocated or removed then the Hirer must notify the Owner in writing of the proposed relocation.
- 7.4 The Owner must give the Hirer at least two weeks' notice of the proposed removal date for the Goods. If a shorter period of notice is given, the Owner may charge additional removal costs.

8. Responsibilities of Hirer

- 8.1 The Hirer shall:
 - (a) Arrange all site connections and disconnections for power, communication, water, waste and other utilities as required.
 - (b) Take all reasonably practicable steps to ensure that the installation site is safe at the time of delivery, relocation and/or removal (as applicable), at all times in compliance with the Health and Safety at Work Act 2015.
 - (c) At its own expense clean and keep the Goods in good and substantial repair and condition, provided that the Hirer shall not undertake any repair or servicing and if any repair or servicing appears desirable shall advise the Owner immediately.
 - (d) Clean the Goods properly and thoroughly upon completion of the hire, or if the Owner has agreed to take responsibility for the cleaning, pay the cleaning cost to the Owner as indicated on the cover sheet.
 - (e) Accept full responsibility for the safekeeping of the Goods and (to the extent permitted by law and subject only to the exceptions as specified hereafter) indemnify the Owner for all loss, theft or damage to the Goods however caused, and for any other losses or damage suffered by the Owner in respect of hire of the Goods to the Hirer, whether or not such loss, theft or damage to the Goods or other losses or damages are attributable to any negligence, failure or omission of the Hirer.
 - (f) Accept full responsibility for, and (to the extent permitted by law) indemnify the Owner against, all claims in respect of any injury to persons or damage to property, arising out of the use of the Goods during the hire period however arising, whether from negligence of the Hirer or any other person including, but without limitation, where the Goods are being operated for any reason by the Owner its servants or agents.
 - (g) Not alter or make any additions to the Goods including, but without limitation, altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Goods or in any other manner interfere with the Goods.
 - (h) Immediately on request by the Owner, advise the Owner of the whereabouts of the Goods and allow the Owner, its agents or servants reasonable time and access to inspect the Goods.

9. Personal Properties Securities Act ("PPSA")

- 9.1 The Hirer acknowledges that:
 - (a) The Contract may create a security interest (as defined in the PPSA) in favour of the Owner in Goods hired to the Hirer by the Owner and that the title to the Goods remains with the Owner at all times.
 - (b) The Hirer will provide such information and do such acts and execute such further documents as in the opinion of the Owner may be necessary or desirable to enable the Owner to perfect under the PPSA the security interest created by the Contract as a first priority interest or with such other priority as the Hirer may agree in writing.
 - (c) The Owner may do all things which it thinks desirable to remedy any default by the Hirer or otherwise protect the Goods or the security interest created by the Contract.
 - (d) The Hirer irrevocably appoints the Owner to be the Hirer's attorney to do anything which the Hirer agrees to do under the Contract and anything which the attorney thinks desirable to protect the Owner's interests under the Contract and the Hirer ratifies anything done by an attorney under this clause 9. The Hirer agrees sections 114 (1) (a), 133 and 134 of the PPSA shall not apply to the Contract or the security under the Contract.
 - (e) The Hirer waives their right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by the Contract.
 - (f) The Hirer agrees that none of their rights as debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA shall apply to the Contract.
 - (g) The Hirer also agrees, where the Owner has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
 - (h) The Hirer must not change the Hirer's name without first notifying the Owner of the new name not less than 7 days before the change takes effect.
 - (i) The Hirer must not allow or permit the creation of a lien over any of the Goods.

10. Owner's Right to Terminate

- 10.1 Without prejudice to any other remedies available to the Owner and notwithstanding any period of hire specified, the Owner may terminate the Contract by notice with immediate effect, if:
 - (a) the Hirer breaches any provision of the Contract; or
 - (b) the Owner believes the Goods to be at risk for whatever reason including, but not limited to, the manner of use of the Goods or that the Hirer is unable to, or is reasonably likely to be unable to, pay any hire charge; or
 - (c) any step is taken to appoint a receiver, manager, trustee in bankruptcy, liquidator, administrator or any like person of the whole or any part of the Hirer's business or assets.
- 10.2 The Hirer grants the Owner, or will procure that the Owner is granted, an irrevocable right and authority to enter, at any time, onto any place where the Goods are situated or thought to be situated, to remove the Goods in the event that the Contract is terminated, without being liable in any way to the Hirer, and the Hirer shall indemnify the Owner upon demand for all claims by any third party for any losses resulting from the Owner effecting repossession.

11. Risk

- 11.1 The Goods will be at the Hirer's risk, and the Hirer accepts all risk of loss and damage to the Goods (irrespective of whether or not such damage is caused by the Hirer), immediately on delivery.
- 11.2 In the case of damage to the Goods, however caused, the Hirer shall be responsible for and shall indemnify the Owner for the full costs of all repairs to restore the Goods to the condition they were in at the time of hire.
- 11.3 In the case of loss or irreparable damage to the Goods, however caused, the Hirer shall be responsible for and shall indemnify the Owner for the full cost to the Owner of replacing the Goods.
- 11.4 The Hirer shall:
 - (a) take proper care of and use the Goods in a manner or to such an extent that a reasonable Hirer would, and according to any specifications and instructions, if any, given by the Owner, and shall maintain the Goods in a good and clean condition;
 - (b) not carry out repairs, maintenance, adjustments, alterations or additions to the Goods without the express consent of the Owner; and
 - (c) immediately notify the Owner, by telephone, if the Goods are damaged or are otherwise in need of maintenance or repair.

12. Liability of Owner

- 12.1 The Hirer relies upon its own knowledge, skill and judgement in relation to the particular use or suitability of the Goods for the Hirer's purpose.
- 12.2 The Owner will accept no liability for any damages or losses arising from a consequence of any act, default or negligence on the part of the Hirer or of an employee, agent or contractor of the Hirer.
- 12.3 The Owner shall not be liable to the Hirer or any third party in contract, tort (including negligence) or on any other basis for:
 - (a) any indirect or consequential losses or damages;
 - (b) any loss of use, loss of profits, loss of anticipated savings; or
 - (c) any third party claims,
 - (d) suffered or incurred by the Hirer; and

Modcom Conditions of Hire

- 12.4 The limitation in clause 12.3 and exclusion of liability applies whether or not the Owner had, or ought to have had, any special or other knowledge that any such losses, damages or claims would be suffered or incurred by the Hirer.
- 12.5 Subject to clause 12.3, the liability of the Owner shall be limited to the amount equal to the total hire charges payable by the Hirer under the Contract.
13. **Delegation of Authority by Hirer**
Where the person signing the document signs for and on behalf of another person or entity as Hirer, the person signing covenants with the Owner that he or she has the authority of the Hirer to make this Contract on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to this Contract and is not released from the obligations hereof by signing on behalf of or in the name of another person or entity as Hirer and, without limiting the foregoing, hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the person so signing this Contract failing to have such power and/or authority.
14. **Dispute Resolution**
Any and all disputes arising between the parties will be resolved in the first instance by good faith discussions. In the event those discussions fail to resolve the dispute within a reasonable period, the parties will refer the dispute to mediation, by a mediator to be agreed upon by the parties, or failing such agreement, by a mediator nominated by the Resolution Institute upon request of either party.
15. **Privacy Act 1993**
- 15.1 The Hirer authorises the Owner to:
- (a) collect, retain and use any information about the Hirer, for the purpose of assessing the Hirer's creditworthiness or marketing products and services to the Hirer; and
 - (b) disclose information about the Hirer to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Hirer.
- 15.2 Where the Hirer is an individual the authorities in this clause 15 are authorities or consents for the purposes of the Privacy Act 1993.
- 15.3 The Hirer shall have the right to request the Owner for a copy of the information about the Hirer retained by the Owner and the right to request the Hirer to correct any incorrect information about the Hirer held by the Owner.
16. **General**
- 16.1 The Hirer will upon demand pay all the Owner's expenses and legal costs (on a solicitor/agent/client basis) of or in connection with the registration of a financing statement or financing change statement relating to the security interest created by the Contract or obtaining an order under section 167 of the PPSA or the collection of overdue moneys or the exercise, enforcement or preservation of any right or interest under the Contract.
- 16.2 If any provision of the Contract shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.3 The Contract shall be governed by the laws of New Zealand and is subject to the exclusive jurisdiction of the courts of New Zealand.
- 16.4 The Hirer shall not be entitled to set off against or deduct from the charges any sums owed or claimed to be owed to the Hirer by the Owner.
- 16.5 The Owner may assign or sub-contract all or any part of its rights and obligations without the Hirer's consent.
- 16.6 The Owner reserves the right to review these terms and the Contract generally at any stage. If, following any such review, there needs to be any change to these terms to account for legislative change or to ensure proper operation of the terms, then that change will take effect from the date on which the Owner notifies the Hirer of such change.
- 16.7 Neither party shall be liable to the other for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.