

Modcom Terms of Trade (sales)

1. Definitions

- 1.1 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.
- 1.2 "Contract" has the meaning set out in clause 2.1.
- 1.3 "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Buyer.
- 1.4 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Buyer.
- 1.5 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 3 of this contract.
- 1.6 "Seller" shall mean Mod Com Portable Buildings Limited, trading under the name "Modcom", and includes its successors and assigns.
- 1.7 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

2. Acceptance

- 2.1 These terms, any cover sheet to these terms, any orders or other documents or statements accepted by the Owner describing the Goods, and any credit application, form the agreement between the Buyer and Seller ("Contract").
- 2.2 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute the Buyer's acceptance of the Contract.
- 2.3 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
- 2.4 The Buyer undertakes to give the Seller at least fourteen (14) days' notice of any change in the Buyer's name, address and/or any other change in the Buyer's details.

3. Quotes

- 3.1 Where a quotation is given by the Seller:
- (a) the quotation shall be valid for 20 working days from the date of issue unless withdrawn earlier by the Seller;
- (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 Seller's own supply costs subsequent to the issue of the quotation.
- 3.2 Where Goods are required in addition to those covered by the quotation, the quote will be revised to account for such additional Goods.

4. Credit Terms

- 4.1 The Seller reserves the right at its discretion to grant or decline to grant credit to the Buyer and to suspend or cancel any credit entitlement with effect from the date of notification to the Buyer.
- 4.2 The Seller reserves the right to impose a credit limit which may be altered at the Seller's discretion with effect from the date of notification to the Owner. If the credit limit is at any time exceeded that shall constitute a breach of these terms. The Seller may, in addition to its other remedies, refuse to accept any further orders from the Owner and/or withhold delivery of any Goods ordered by the Buyer until the breach is remedied to the satisfaction of the Seller.
- 4.3 The Buyer shall, if required by the Seller, arrange for the Buyer liability to be guaranteed by third persons or secured by securities on terms satisfactory to the Seller. This requirement may be imposed by the Seller at any time and the Seller may suspend the Buyer's entitlement to credit and/or withhold delivery of any Goods ordered by the Buyer pending its fulfilment to the satisfaction of the Seller.

5. Price And Payment

- 5.1 The Price shall be either:
- (a) as indicated on any applicable cover sheet, or invoices provided by the Seller to the Buyer in respect of Goods supplied; or
- (b) the Seller's quoted Price (subject to clause 3).
- 5.2 The Seller reserves the right to change the Price in the event of a change in the Seller's own supply costs.
- 5.3 At the Seller's sole discretion a deposit may be required.
- 5.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven days following the date of the invoice.
- 5.5 At the Seller's sole discretion;
- (a) payment shall be due on delivery of the Goods, or
- (b) payment for approved Buyers shall be made by instalments in accordance with the Seller's payment schedule, or
- (c) payment for approved Buyers shall be due 20 days following the month in which a statement is posted to the Buyer's address or address for notices.
- 5.6 Interest may be charged on any amount owing after the applicable due date at a rate of 2.5% per month or part month until payment of the amount owing, all related interest and any associated charges is made in full.
- 5.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Seller.
- 5.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

6. Delivery Of Goods

- 6.1 At the Seller's sole discretion delivery of the Goods shall take place when:
- (a) the Buyer takes possession of the Goods at the Seller's address; or
- (b) the Buyer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Buyer's agent.
- 6.2 At the Seller's sole discretion, any costs it incurs in association with delivery are:
- (a) in addition to the Price, or
- (b) for the Buyer's account.
- 6.3 Subject to the Seller's agreement otherwise, the Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery to reflect its own additional costs incurred.
- 6.4 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 6.5 The failure of the Seller to deliver for reasons that are outside of its control shall not entitle the Buyer to treat this Contract as repudiated.
- 6.6 Where the Seller agrees to deliver the Goods, the Buyer shall:
- (a) authorise the Owner (or procure such authorisation) to enter and to bring its vehicles onto the Buyer's property (or any property within the Buyer's control) in order to deliver the Goods;
- (b) take all reasonably practicable steps to ensure the safety of the delivery site and access thereto, at all times in compliance with the Health and Safety at Work Act 2015; and
- (c) point out any hazards or other items for anyone effecting the delivery to be aware of.

7. Risk

- 7.1 The Goods will be at the Buyer's risk, and the Buyer accepts all risk of loss and damage to the Goods (irrespective of whether or not such damage is caused by the Buyer), immediately on delivery.

- 7.2 The Buyer will insure the Goods at full replacement value until legal and beneficial ownership of them has passed to the Buyer. If the Goods are damaged or destroyed before legal and beneficial ownership of them has passed to the Owner, the Owner will hold the proceeds of such insurance in a separate fund and on trust for the Seller.

8. Title

- 8.1 It is the intention of the Seller and agreed by the Buyer that ownership of the Goods shall not pass until:
- (a) the Buyer has paid all amounts owing for the particular Goods, and
- (b) the Buyer has met all other obligations due by the Buyer to the Seller in respect of the Contract and any other arrangements entered into between the Seller and the Buyer.
- 8.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured or cleared and until then the Seller's ownership or rights in respect of the Goods shall continue.
- 8.3 Until such time as ownership of the Goods has passed from the Seller to the Buyer, or the Goods have been on-sold by the Buyer, the Buyer will not disassemble, or make any structural alterations to, the Goods without the consent of the Seller.
- 8.4 If the Goods have been on-sold, or otherwise disposed of by the Buyer before ownership has passed, the Buyer shall be accountable to the Seller for payment of the purchase price of those Goods sold and will hold an equivalent amount from the sale proceeds in a separate fund, on trust for the Seller.

9. Personal Property Securities Act ("PPSA")

- (a) The Buyer will provide such information and do such acts and execute such further documents as in the opinion of the Seller may be necessary or desirable to enable the Seller to perfect under the PPSA the security interest created by the Contract as a first priority interest or with such other priority as the Buyer may agree in writing.
- (b) The Seller may do all things which it thinks desirable to remedy any default by the Buyer or otherwise protect the Goods or the security interest created by the Contract.
- (c) The Buyer irrevocably appoints the Seller to be the Buyer's attorney to do anything which the Buyer agrees to do under the Contract and anything which the attorney thinks desirable to protect the Seller's interests under the Contract and the Buyer ratifies anything done by an attorney under this clause 9. The Buyer agrees sections 114(1)(a), 133 and 134 of the PPSA shall not apply to the Contract or the security under the Contract.
- (d) The Buyer 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.
- (e) The Buyer 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.
- (f) The Buyer also agrees, where the Seller has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- (g) The Buyer must not change the Buyer name without first notifying the Seller of the new name not less than seven days before the change takes effect.
- (h) The Buyer must not allow or permit the creation of a lien over any of the Goods.

10. Defects

- 10.1 Without limiting the Buyer's rights under the Consumer Guarantees Act 1993 (to the extent it is applicable), the Buyer shall inspect the Goods on delivery and shall within fourteen days notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.

11. Returns

- 11.1 Subject to clause 13, returns will only be accepted provided that:
- (a) the Buyer has complied with the provisions of clause 10.1; and
- (b) the Seller has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Buyer's cost within fourteen days of the delivery date; and
- (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 11.2 The Seller will not provide a refund in respect of the return of Goods. The buyer's remedies will be limited to repair, replacement or store credit.

12. Warranty

- 12.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.

13. Consumer Guarantees Act 1993 and Liability

- 13.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 except where the Buyer is purchasing the Goods for the purposes of a trade/business.
- 13.2 Subject to clause 13.1:
- (a) the Buyer relies upon its own knowledge, skill and judgement in relation to the particular use or suitability of the Goods for the Buyer's purpose;
- (b) the Seller will accept no liability for any damages or losses arising from a consequence of any act, default or negligence on the part of the Buyer or of an employee, agent or contractor of the Buyer;
- (c) subject to the provisions of clause 13.2(d), the Seller's liability under or in connection with the performance of the Contract, whether in tort, contract, equity or on any other basis, shall be limited to the lesser of the price of the Goods complained of, the cost of repairing or replacing the Goods and the actual loss or damage suffered by the Buyer;
- (d) the Seller shall not be liable to the Buyer or any third party in contract, tort (including negligence) or on any other basis for:
- (i) any indirect or consequential losses or damages;
- (ii) any loss of use, loss of profits, loss of anticipated savings; or
- (iii) any third party claims,
- (e) suffered or incurred by the Buyer; and
- (f) the limitation in clause 13.2(d) and exclusion of liability applies whether or not the Seller 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 Buyer.

14. Intellectual Property

- 14.1 Where the Seller has designed, drawn or otherwise created Goods for the Buyer, then the copyright in the relevant designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion, and subject to any separate contractual terms that the Seller may require.
- 14.2 The Buyer warrants that all designs or instructions provided to the Seller in association with the creation of the Goods will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order, and the Buyer indemnifies the Seller in

Modcom Terms of Trade (sales)

respect of any damages, losses or expenses suffered by the Seller as a result of a breach by the Buyer of this clause.

15. Default & Consequences of Default

- 15.1 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 15.2 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend the supply of Goods to the Buyer and any of its other obligations under the Contract. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 15.3 The Seller may take possession of Goods where any event of default occurs or the Goods are at risk (as defined by section 109 of the PPSA), and for that purpose it shall have the irrevocable right or licence by its agents servants and employees to enter the premises of the Buyer or any other premises where the Goods are situated (including any premises, land and buildings that the Buyer may enter upon) without being liable in any way to the Buyer, and the Buyer shall indemnify the Seller upon demand for all claims by any third party for any losses resulting from the Seller effecting repossession.

16. Cancellation

- 16.1 Without prejudice to any other remedies available to the Seller, the Seller may terminate the Contract by notice with immediate effect, if:
- the Buyer breaches any provision of the Contract; or
 - the Seller believes the Goods to be at risk for whatever reason including, but not limited to, that the Buyer is unable to, or is reasonably likely to be unable to, pay the purchase price; or
 - 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 Buyer's business or assets.
- 16.2 The Buyer grants the Seller, or will procure that the Seller 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.

17. Privacy Act 1993

- 17.1 The Buyer authorises the Seller to:
- collect, retain and use any information about the Buyer, for the purpose of assessing the Buyer's creditworthiness or marketing products and services to the Buyer; and
 - to disclose information about the Buyer, whether collected by the Seller from the Buyer directly or obtained by the Seller from any other source, 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 Buyer.
- 17.2 Where the Buyer is an individual the authorities under (clause 17.1) are authorities or consents for the purposes of the Privacy Act 1993.
- 17.3 The Buyer shall have the right to request the Seller for a copy of the information about the Buyer retained by the Seller and the right to request the Seller to correct any incorrect information about the Buyer held by the Seller.

18. Delegation of Authority by Seller

- 18.1 Where the person signing the Contract signs for and on behalf of another person or entity as Buyer, the person signing covenants with the Seller that he or she has the authority of the Buyer to make this Contract on the Buyer's behalf and is empowered by the Buyer to bind the Buyer 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 Buyer and, without limiting the foregoing, hereby indemnifies the Seller against all losses and costs incurred by the Seller arising out of the person so signing this Contract failing to have such power and/or authority.

19. 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.

20. General

- 20.1 The Buyer will upon demand pay all the Seller'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 exercise, enforcement or preservation of any right or interest under the Contract.
- 20.2 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.
- 20.3 The Contract shall be governed by the laws of New Zealand and is subject to the exclusive jurisdiction of the courts of New Zealand.
- 20.4 The Buyer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller.
- 20.5 The Seller may assign or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 20.6 The Seller 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 Seller notifies the Buyer of such change.
- 20.7 Neither party shall be liable 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.