

MODNframe Limited

STANDARD TERMS OF SALE

Version 2.0, Effective 28 May 2024

MODNframe agrees to supply, and the Purchaser agrees to purchase, Product on the terms of the Agreement.

1 INTERPRETATION

1.1 In these terms of sale (Terms), unless the context requires otherwise:

"Affiliate" means, for any party, any other persons that directly or indirectly Control, are Controlled by, or are under common Control with, such party.

"Agreement" means an agreement for the sale of the applicable Product from MODNframe to the Purchaser, which comprises:

- a) these Terms in force from time to time (and as may be amended from time to time in writing by MODNframe and notified to the Purchaser, including by uploading to the Website);
- b) the specific terms as may be set out in an Estimate or Quotation issued by MODNframe or an agreement signed by MODNframe and the Purchaser referencing these Terms;
- c) any licence or franchise agreement between MODNframe and the Purchaser; and
- d) such other document or documents (if any) as specifically agreed by MODNframe and the Purchaser in writing to form part of the Agreement, PROVIDED THAT

an Agreement will not include the terms of any Purchase Order (and no Purchase Order will have any contractual effect), unless expressly specified otherwise in writing by MODNframe for a particular sale of Product

Documents described in (b), (c) and (d) above, as applicable, shall together comprise the **"Specific Terms"**.

"Amount Owing" means the Product Price, and any other amounts which MODNframe is entitled to charge under the Agreement and which are outstanding.

"Control", and its derivative terms, means in relation to any entity, the power of a person to secure (directly or indirectly) by means of the holding of shares or possession of voting power or by virtue of any other arrangements that the affairs of the entity are conducted in accordance with the wishes of that person.

"Estimate" means the estimate form used by MODNframe for the supply of the Product for ordering the Product.

"Event of Default" means any Insolvency Event or any event where the Purchaser:

- a) fails to comply with the terms of the Agreement or any other agreement with MODNframe or an Affiliate of MODNframe; or
- b) agrees or purports to assign an ownership interest in the proceeds of any sale of the Product comprising a book debt.

"Force Majeure Event" means any of the following events or occurrences and the effects thereof: act of God or public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, fire, explosion, epidemic, war, embargo, riot or civil disturbance, strike or other labour dispute (other than involving the relevant party, any Affiliate of the relevant party, any sub-contractor, agent, supplier or any contractor who has contracted (directly or indirectly) with the relevant party or any Affiliate to provide plant, materials, labour or equipment for the supply of the Product), sabotage, expropriation, confiscation or requisitioning of facilities, orders or temporary or permanent injunctions of any duly constituted court of competent jurisdiction and any other matter or event which is beyond the control of the relevant party and which the relevant party could not take reasonable measures to prevent or mitigate the effects thereof, but does not include any failure to pay any amount due under the Agreement.

"GST" means goods and services tax payable under the Goods and Services Tax Act 1985.

"Insolvency Event" means in respect of a party (other than for purpose of solvent reconstruction or amalgamation) any event where:

- a) a receiver, receiver and manager, liquidator, provisional liquidator, trustee, administrator, controller, inspector appointed under any companies or security legislation, or another similar official, is appointed in respect of that party or any of its property, or any security is enforced over a substantial part of its assets; or
- b) the party ceases to carry on all or substantially all of its business, is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with the party's creditors or threatens to do so, or stops payments to its creditors generally; or
- c) the party is, becomes, or is deemed to be insolvent or bankrupt; or
- d) a distress, attachment or other execution is levied or enforced upon or commenced against any substantial part of its assets and is not stayed within 14 days; or
- e) anything having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction; or
- f) in the event that that party is an individual, anything having a similar effect to any of the events specified above happens in respect of that individual.

"MODNframe" means MODNframe Limited or, as applicable, an Affiliate of MODNframe Limited, as indicated to the Purchaser, by whom the Product is to be supplied to the Purchaser.

"Product" means the product specified in the Specific Terms.

"Product Price" means the price for the Product specified in the Specific Terms, or in the absence of such specification shall be the then current price for the applicable Product as set out in the applicable Specific Terms.

"Product Specifications" means the specifications set out in the Specific Terms as applies to the applicable Product or such other specification of the Product that are agreed to by MODNframe and the Purchaser in writing.

"Purchase Order" means a purchase order form issued by the Purchaser in connection with the order of a Product.

"Purchaser" has the meaning as provided in the Specific Terms.

"Quotation" means the quotation form used by MODNframe for the supply of the Product for ordering the Product.

"Site" means the land and property specified as the site for delivery of the Product as set out in the Specific Terms.

"Website" means the website operated by MODNframe with the url www.MODNframe.com or such other url as notified by MODNframe from time to time.

1.2 In these Terms, unless the context otherwise requires:

- (a) a reference to a statute includes all regulations under and amendments to that statute and any statute passed in substitution for that statute;
- (b) headings are inserted for convenience and are to be ignored in construing these Terms;
- (c) all amounts are in New Zealand dollars unless expressly stated otherwise;
- (d) the singular includes the plural and vice versa; and

- (e) the word "person" includes a natural person and any body or entity whether incorporated or not.

2 RELATIONSHIP

- 2.1 The relationship between MODNframe and the Purchaser is that of a company and independent contractor. Nothing in the Agreement will constitute any other relationship. The Purchaser acknowledges that it is not the legal representative, agent, joint venturer, or partner of MODNframe for any purpose and it has no right or authority to assume or create any obligations of any kind or to make any representations or warranties, for or on behalf of, or to bind MODNframe in any respect.

3 PRODUCT PRICE AND PAYMENT

- 3.1 The Purchaser will pay the Product Price for the Product supplied pursuant to the Agreement in accordance with the Specific Terms. The Product Price is exclusive of GST and all other taxes or duties levied or assessed in connection with the supply of the Product, unless otherwise expressly stated in the Specific Terms.
- 3.2 Unless otherwise expressly stated the prices in an Estimate or a Quotation are based on the current material and labour prices at the date of issue and are subject to availability of material. Any increase in any such prices after the date of issue of an Estimate or a Quotation, as applicable, and before the date of delivery or commencement of installation shall be to the Purchaser's account.
- 3.3 MODNframe shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Purchaser. An Estimate and a Quotation remains valid only if the framing is constructed in accordance with the original plans or measurements submitted to MODNframe and any variation will be to the Purchaser's account.
- 3.4 If the giving of an Estimate or a Quotation for the supply of Products and any related services involves MODNframe estimating measurements and quantities, it shall be the responsibility of the Purchaser to verify the accuracy of MODNframe's estimated measurements and quantities before the Purchaser places an order based on such Estimate or Quotation, as applicable.
- 3.5 Any changes to the original scope of works stated in an Estimate or Quotation that are accepted by MODNframe and that create additional cost to the project, will be added to the Estimate or Quotation in the form of variations with consequential impact on pricing, availability and timing.
- 3.6 Unless stated otherwise in an Estimate or a Quotation, the Purchaser must pay the Product Price at the time that an order is placed with MODNframe following issue of the Estimate or Quotation and no such order may be cancelled without the prior written approval of MODNframe.
- 3.7 The Purchaser may not withhold payment or make any deductions from any Amount Owning without MODNframe's prior written consent.
- 3.8 MODNframe reserves the right to charge interest on any Amount Owning. If it determines to do so, interest will accrue at 4% above the then current retail lending base rate at the Bank of New Zealand, calculated on a daily basis on the unpaid portion of the relevant Amount.

4 SPECIFIC TERMS (INCLUDING ESTIMATES AND QUOTATIONS)

- 4.1 Estimates and Quotations: MODNframe may complete and provide to the Purchaser, from time to time, Estimate(s) and Quotation(s) in relation to the Product to be supplied pursuant to these Terms and which will, if accepted by the Purchaser form an Agreement as relates to the specific Products. Estimates and Quotations will have a stated lapse date after which they cannot be accepted (and if there is no stated lapse date it is 14 days

after issue date). Estimates and Quotations may be amended and/or cancelled by MODNframe at any time.

- 4.2 To the extent that there is any inconsistency between the terms set out in any Specific Terms and the terms set out in these Terms, the terms set out in the Specific Terms shall prevail.

5 NO ASSIGNMENT

- 5.1 The Purchaser may not assign any of its rights or obligations under the Agreement, except with the prior written consent of MODNframe.

6 FORCE MAJEURE

- 6.1 Where either MODNframe or the Purchaser is unable, wholly or in part, by reason of a Force Majeure Event, to carry out any obligation under the Agreement and:
- (a) that party gives the other party immediate written notice of the nature and expected duration of, and the obligation affected by, the Force Majeure Event; and
 - (b) that party uses all reasonable endeavours to mitigate the effects of the Force Majeure Event on that party's obligations under the Agreement; and perform that party's obligations under the Agreement despite the Force Majeure Event,
- that obligation is suspended so far as it is affected by the Force Majeure Event during its continuance.
- 6.2 If, by reason of a Force Majeure Event, the delay or non-performance of either MODNframe's or the Purchaser's obligations shall continue for more than 90 consecutive days, or for an aggregate of 180 days in any 12 month period, whichever of MODNframe and the Purchaser who is not relying on the Force Majeure Event may terminate the Agreement (including any Estimate, Quotation or other Specific Terms to the extent affected by the Force Majeure Event) by written notice to the other party.

7 PURCHASER'S OBLIGATION

- 7.1 The Purchaser will purchase the Product from MODNframe, or such of MODNframe's Affiliates as advised by MODNframe, in accordance with the terms of the Agreement. In the event that the Product is to be purchased from an Affiliate of MODNframe, the parties agree that the provisions of the Agreement are also for the benefit of, and are intended to be enforceable by, such Affiliate under the Contract and Commercial Law Act 2017 as relates to contractual privity.

8 DELIVERY

- 8.1 If the Specific Terms provides for MODNframe to arrange delivery, MODNframe will deliver or arrange delivery of Product to the Site. Delivery charges will be included in the Specific Terms.
- 8.2 If the Purchaser delays, fails or refuses, or indicates to MODNframe that it will delay, fail or refuse to, take delivery, then the Product shall be deemed to have been delivered when MODNframe was willing and able to deliver the Product and payment will immediately be due to MODNframe. The Product may be stored by MODNframe at the Purchaser's risk and expense if the Purchaser delays in taking delivery.
- 8.3 Any time stated for delivery is an estimate only. MODNframe reserves the right to nominate a suitable time for loading the Products onto a delivery vehicle and MODNframe is not liable for any delay in delivery.
- 8.4 In all circumstances it shall be the responsibility of the Purchaser to immediately unload the Product, or to arrange for a suitable means of unloading of the Product, from the relevant delivery vehicle (at the cost of the Purchaser).

9 WARRANTIES

- 9.1 MODNframe warrants that all Product under the Agreement will

comply in all material respects with the Product Specifications.

10 RISK AND OWNERSHIP

10.1 Risk of any loss, damage or deterioration of or to the Product passes to the Purchaser, upon delivery pursuant to section 8.

10.2 Subject to the following provisions in this section 10, legal and beneficial ownership ("ownership") of the Product remains with MODNframe and does not pass to the Purchaser until the Purchaser:

- (a) pays the Amount Owning and any other moneys owing by the Purchaser to MODNframe from time to time, whether in relation to the Agreement or any other agreement or on any other account whatever ("Purchaser's Indebtedness"); or
- (b) resells the Product pursuant to the authority granted by these terms.

10.3 Where the Product is processed prior to payment of the Purchaser's Indebtedness, ownership of the Product and such part or parts as are identifiable as being substantially derived from Product supplied by MODNframe ("**Processed Goods**") shall remain with MODNframe until the earlier of payment of the Purchaser's Indebtedness or such time as such Processed Goods have been sold by the Purchaser pursuant to these terms.

10.4 While ownership of the Product or Processed Goods remains with MODNframe:

- (a) the Purchaser must store it separately and clearly identify them as belonging to MODNframe;
- (b) MODNframe authorises the Purchaser in the ordinary course of its business to use the Product and the Processed Goods or sell them for full consideration. This authority is revoked from the time that (1) an Event of Default occurs; or (2) MODNframe notifies the Purchaser in writing that this authority is revoked.
- (c) the Purchaser must advise MODNframe immediately of any Event of Default or any action by third parties affecting MODNframe's interest in the Product or the Processed Goods; and MODNframe as the Purchaser's agent may enter the premises where any Product or Processed Goods are stored and remove them. MODNframe may resell any of the Product or Processed Goods and apply the proceeds of sale in reduction of the Purchaser's indebtedness.

10.5 If the Purchaser resells any Product or Processed Goods before ownership of the Product or the Processed Goods has passed to the Purchaser, the proceeds of such sale shall be received and held by the Purchaser (in whatever form) in trust for both the Purchaser and MODNframe. MODNframe's interest as beneficiary under that trust shall be that portion of the proceeds which does not exceed the Purchaser's Indebtedness to MODNframe.

10.6 In addition to the forgoing provisions of this section 10 and pursuant to the Personal Property Securities Act 1999 ("the **PPSA**"), the Purchaser on entering any Agreement grants a security interest in all its present and after acquired inventory to the extent that it comprises Products, as security for payment of the purchase price of all Products supplied to the Purchaser on the following terms:

- (a) The Purchaser acknowledges MODNframe is entitled to register a security interest in the Products, including any proceeds of sale, pursuant to the PPSA;
- (b) The Purchaser shall provide all information and do all things including the execution of documents as MODNframe may require ensuring that MODNframe has a perfected first ranking security interest in the Products and any proceeds under the PPSA. The Purchaser shall give prior written notice to MODNframe of any change of the Purchaser's name.

- (c) MODNframe shall be entitled to register a financing statement to perfect its security interest in any Products delivered or to be delivered to the Purchaser.
- (d) MODNframe shall have the right, as the Purchaser's agent without notice, at any time while the Purchaser has outstanding purchase moneys owing to MODNframe, to enter into the premises where Products are stored and remove them without being responsible for any damage caused in doing so.
- (e) The Purchaser shall indemnify MODNframe against any claims arising from the exercise of this right of re-entry. All costs and expenses of or incurred by MODNframe as a result of any action, together with transportation and storage charges shall be payable by the Purchaser upon demand.
- (f) The Purchaser waives its rights to receive a copy of any verification statement under the PPSA and agrees that as between the Purchaser and MODNframe:
 - i The Purchaser will have no rights under the following sections of the PPSA: 114(1) (a) (to receive notice of sale of goods); 116 (to recover a statement of account); 117(1)(c) (to receive any surplus); 119 (to recover any surplus); 120 (2) (to receive notice of proposal to take the goods); 121 (to object to a proposal to take the goods); 12S (not to have goods damaged when a secured party removes an accession); 126 (to be reimbursed for damage caused when a secured party removes an accession); 127 (to refuse permission to remove an accession); 129 (to receive notice of the removal of an accession); 131 (to apply to the court for an order concerning the removal of an accession); and 132 (to redeem collateral).
 - ii If MODNframe has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.
- (g) Any payments made to MODNframe by the Purchaser on an unspecified basis shall be deemed to be applied in the following order:
 - i First in payment for Products supplied by MODNframe and which have been sold by the Purchaser; and
 - ii Second in payment for Products supplied by MODNframe and which have not been sold by the Purchaser.

11 PRODUCT GUARANTEES

11.1 Where the Consumer Guarantees Act 1993 applies to this contract:

- (a) if the Product is acquired by the Purchaser for business purposes, the Purchaser agrees that the Consumer Guarantees Act 1993 does not apply; and
- (b) if the Product is not acquired by the Purchaser for business purposes, MODNframe reserves the right to repair or replace any goods which fail to comply with any guarantee contained in the Consumer Guarantees Act 1993.

11.2 Where the Purchaser supplies the Product in trade to a person acquiring them for business purposes, it must be a term of the Purchaser's contract with that person that the Consumer Guarantees Act 1993 does not apply in respect of the Product.

11.3 MODNframe does not provide any Express Guarantees (as defined in the Consumer Guarantees Act 1993) other than those expressly confirmed by MODNframe in writing.

11.4 Where the Purchaser supplies the Product to any other person in the course of trading, the Purchaser must not give or make any undertaking, assertion or representation in relation to the Product without MODNframe's prior approval in writing.

11.5 The Purchaser agrees to indemnify MODNframe against any liability or cost incurred by MODNframe under the Consumer

Guarantees Act 1993 as a result of any breach by the Purchaser of the obligations contained in the Agreement.

11.6 The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to the Agreement, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:

- (a) Defective Product which does not comply with the applicable Agreement shall at MODNframe's discretion be repaired or replaced, or the price refunded.
- (b) Any right which the Purchaser may have to reject any non-conforming or defective Product shall only be effective if the Purchaser notifies MODNframe in writing within 7 days following delivery and MODNframe is given the opportunity to inspect the Product.
- (c) No Product shall be returned unless MODNframe has agreed in advance.
- (d) MODNframe may, at its discretion, delay the repair or replacement of, or the refund of the price of, any Product for so long as the Purchaser is in default in relation to the Amount Owed.
- (e) MODNframe accepts no liability for any claim by the Purchaser or any other person, including, without limitation, any claim relating to or arising from:
 - i any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise, except as expressly provided for in the Agreement; or
 - ii any representations, warranties, conditions or agreement made by any agent or representative of MODNframe, which are not expressly confirmed by MODNframe,and the Purchaser agrees to indemnify MODNframe against any such claim.
- (f) in any event, MODNframe's liability under any claim shall not exceed the Product Price.

11.7 Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act.

11.8 Claims: To the fullest extent permitted by law:

- (a) No claim for defective Products, shortages in quantity lengths or weights will be considered or allowed, unless MODNframe is notified of such a claim within seven days of delivery of the goods to the Purchaser as provided under clause 8.
- (b) On receipt of such claim MODNframe must be given a reasonable opportunity to investigate such a claim.
- (c) MODNframe's liability to refund shall be limited to the amount which MODNframe is able to recover from the supplier.
- (d) MODNframe will not be responsible for consequential losses or claims associated with:
 - i Delivery on a specified date;
 - ii Loss caused by factors outside MODNframe's control;
 - iii Material supplied outside of specification requested;
 - iv The loss of, or damage to, Products either in MODNframe's premises or in transit, whether or not that loss or damage is caused by the negligence of MODNframe; or
 - v Deterioration of the Product supplied, due to exposure to the elements.

12 TERMINATION

12.1 Without prejudice to any other right or remedy it may have, whether under the Agreement, under statute or otherwise, a party may terminate the Agreement (including any Estimate, Quotation or other Specific Terms) by written notice to the other party if:

- (a) the other party breaches any material obligation of that party under the Agreement (including any Estimate, Quotation or other Specific Terms); and
 - i the breach is not capable of being remedied; or
 - ii the breach is capable of being remedied and the defaulting party fails to remedy the breach to the non-defaulting party's satisfaction within 14 days after notice in writing has been given to the defaulting party requiring such breach to be remedied; or
- (b) an Insolvency Event occurs in respect of the other party.

Termination of the Agreement under this clause shall automatically terminate every Agreement for the future supply of further Product in existence at the time of termination (including any Estimate, Quotation or other Specific Terms) unless otherwise specified by the non-defaulting party in the relevant notice.

12.2 Termination of an Agreement shall not affect sections 11, 12 and 13 or any other provisions of these Terms which are intended to continue after termination and shall also be without prejudice to any claim by either party against the other party arising out of any breach or non-performance by that party of any obligations assumed by or imposed on that party under the Agreement at any time prior to termination.

12.3 In the event that MODNframe terminates the applicable Agreement under clause 12.1 or clause 6.2, payment for any Product delivered up to the date of such termination shall immediately become due and payable.

12.4 If the Purchaser does not pay the Product Price by the due date MODNframe may charge interest at a rate per annum equal to 4% above the retail lending base rate of the Bank of New Zealand as varied from time to time and calculated on a daily basis on the unpaid portion of the price from due date until payment in full, plus GST.

13 GENERAL

13.1 MODNframe may set off any sums due by it or any of its Affiliates to the Purchaser or any of its Affiliates under any agreement between the relevant parties ("**Relevant Agreements**") against the costs and expenses resulting from any breach by the Purchaser or any of its Affiliates of any Relevant Agreement and any losses (whether direct or indirect) sustained as a result.

13.2 The Agreement in relation to the sale and purchase of the applicable Product constitutes the entire agreement of the parties about its subject matter. The parties agree that, unless otherwise specifically agreed in writing, the terms of the Agreement shall prevail over any existing or subsequent terms, set out in any document provided by the Purchaser and that such other terms are rejected by MODNframe.

13.3 No waiver of any breach of, or failure to enforce any provision of, the Agreement at any time by any party shall in any way limit the right of such party thereafter to enforce and require strict compliance with the provisions of the Agreement.

13.4 No party shall vary the Agreement (or any component of it) except in writing signed on behalf of both MODNframe and the Purchaser.

13.5 This Agreement shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.