**MODNframe Limited**

**STANDARD TERMS AND CONDITIONS OF SALE**

**Version 1.0, Effective 27 September 2022**

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

1. INTERPRETATION
	1. In these Conditions of Sale, unless the context requires otherwise:

**"Affiliate”** means, for any Party, any other persons that directly or indirectly through one or more intermediaries, 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:

1. these Conditions of Sale 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);
2. the specific terms as may be set out in a quote issued by MODNframe or an agreement signed by MODNframe and the Purchaser referencing these Terms and Conditions or as set out in a Purchase Order or other document approved and accepted by MODNframe in writing;
3. Any licence or franchise agreement between MODNframe and the Purchaser; and
4. such other document or documents (if any) as specifically agreed by MODNframe and the Purchaser in writing to form part of the Agreement.

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.

"**Confidential Information**" means any information, verbal or written, personal or otherwise including documents, plans, sketches, drawings, software, marketing strategies, market research data, product literature, trade secrets, processes, technical information, know-how and intellectual property of MODNframe or any of its related or associated companies and any copies thereof but shall not include public information (provided such information did not become public as a result of unauthorised disclosure by the Purchaser), information independently developed or acquired or information authorised in writing by MODNframe for disclosure.

**“Control”**, and its derivative terms, means:

1. 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 (in relation to either that entity or any other entity) that the affairs of the entity are conducted in accordance with the wishes of that person; and
2. in relation to a partnership or other unincorporated association, the right to a share of more than one half of its net assets or net income.

"**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.

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

1. fails to comply with the terms of the Agreement or any other agreement with MODNframe or an Affiliate of MODNframe; or
2. 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 related company of the relevant party, any sub-contractor, agent, supplier or any contractor who has contracted (directly or indirectly) with the relevant party or any related company to provide plant, materials, labour or equipment in connection with 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 or inability to pay any amount outstanding 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:

1. 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
2. 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;
3. or the party is, becomes, or is deemed to be insolvent or bankrupt;
4. or 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 anything having a similar effect to any of the events

1. specified above happens under the law of any applicable jurisdiction; or
2. 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.

"**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 the purchase order form utilised by the Purchaser for ordering Product from time to time.

“**Purchaser**” has the meaning as provided in the Specific Terms.

"**Site**" means the land and property specified as the site for delivery of the Product as set out in the Specific Terms or such other land and property that is agreed to by MODNframe and the Purchaser in writing.

"**Specific Terms**" has the meaning provided above in this clause 1.1 (as set out in the definition of “Agreement”).

"**Terms and conditions**" means these general terms and

Conditions of sale.

“**Website**” means the website operated by MODNframe with the url www.MODNframegroup.com or such other or additional url as notified by MODNframe from time to time.

* 1. 1.2 In these Conditions of Sale, unless the context otherwise requires:
1. a reference to a statute includes all regulations

under and amendments to that statute and any

statute passed in substitution for that statute or

incorporating any of its provisions to the extent

that they are incorporated;

1. headings are inserted for convenience only and are

to be ignored in construing these Conditions of Sale;

1. all amounts are in New Zealand dollars unless

expressly stated otherwise;

1. the singular includes the plural and vice versa; and
2. the word "person" includes a natural person and any body or entity whether incorporated or not.
3. TERM

These Conditions of Sale have no term. Any term as applies to the Agreement shall be as may be set out in the applicable Specific Terms.

1. PRODUCT PRICE AND PAYMENT
	1. 3.1 Product Price and payment: Subject to clauses 3.4 and 8.4, 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.
	2. 3.2 Right to increase: MODNframe reserves the right to

increase the Product Price by the amount of any increase in the cost of any factors affecting the cost of supply, production and/or delivery of the Products.

3.3 Notice of increase: The Purchaser will be given reasonable

written notice of any such increase in price. Where the Purchaser receives notice of a price increase, the Purchaser may cancel the relevant order or balance of orders outstanding by giving MODNframe written notice.

3.4 Payment on order:, The Purchaser must pay the Product Price at the time that an order is placed with MODNframe and no such order may be cancelled without the prior written approval of MODNframe. Clause 13.4 will apply to orders for which payment has been made under this clause and which are cancelled with MODNframe's written consent.

3.5 No enquiry: MODNframe is under no obligation to enquire as to the authority of any person placing an order on behalf of the Purchaser.

3.6 Credit limit: MODNframe may, at its discretion, impose a credit limit in respect of Product supplied under the Agreement, and alter the credit limit, without notice. Where the credit limit is exceeded, MODNframe reserves the right to refuse to supply Product to the Purchaser.

3.7 No withholding: The Purchaser may not withhold payment or

make any deductions from any Amount Owing without MODNframe's prior written consent.

3.8 Interest on Amount Owing: MODNframe reserves the

right to charge interest on any Amount Owing but not in addition to any Amount Owing in respect of which interest is payable under clause 14.4. If it determines to do so, interest will accrue at 4% above the retail lending base rate at the Bank of New Zealand as varied from time to time and calculated on a daily basis on the unpaid portion of the relevant Amount Owing and will be payable in the manner specified by MODNframe. If interest is to be charged, disclosure will be made to the Purchaser in accordance with the Credit Contracts Act 1991.

1. SPECIFIC TERMS (INCLUDING ORDER FORMS)

4.1 Purchase Orders: The Purchaser may complete and provide to MODNframe, from time to time, Purchase Order(s) in relation to the Product to be supplied pursuant to these Terms and Conditions and which will, if accepted by MODNframe form an Agreement as relates to the specific Products.

4.2 Conflicts with terms of Specific Terms: To the extent that there is any inconsistency or conflict between the terms and conditions set out in any Specific Terms and the terms and conditions set out in these Conditions of Sale, the terms and conditions set out in the Specific Terms shall prevail.

1. EXCLUSIVE PURCHASE

5.1 Exclusive purchase: If the Specific Terms expressly provides for an exclusive purchase arrangement in respect of any particular Product, the Purchaser shall purchase all of its requirements for the particular Product from MODNframe and MODNframe shall supply all such requirements to the extent that MODNframe has the capacity and ability to do so. In the event that MODNframe is unwilling or unable to supply the Product or a quantity thereof to the Purchaser in accordance with this clause 5.1, the Purchaser will be released from its obligations under this clause 5.1 insofar as they relate to that Product or a quantity thereof.

1. NON-EXCLUSIVE PURCHASE

6.1 Non-exclusive purchase: If the Specific Terms expressly provides for a non-exclusive purchase arrangement in respect of any particular Product or is silent as to whether the purchase arrangement is exclusive or not (in which case the Agreement shall be deemed to provide for a non-exclusive purchase arrangement) the Purchaser shall only be obliged to purchase the amount of Product which it agrees to purchase pursuant to the Specific Terms comprised in the Agreement and shall not be obliged to purchase all of its Product requirements from MODNframe.

1. PURCHASER'S OBLIGATION

7.1 Purchase of Product: The Purchaser will purchase the Product from MODNframe, or such of MODNframe's related or associated companies as is reasonably deemed appropriate by MODNframe, in accordance with the terms of the Agreement. In the event that the Product is to be purchased from a related or associated company 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 related or associated company under the Contract and Commercial Law Act 2017 as relates to contractual privity.

1. DELIVERY

8.1 "Free into the Buyer's Store": If the Specific Terms provides that delivery shall be made on the basis of "Free into the Buyer's Store", MODNframe shall deliver, or arrange delivery of, Product to the Site and pay any transportation costs incurred as a result.

8.2 "Ex-works MODNframe": If the Specific Terms provide that delivery shall be "Ex-works MODNframe", delivery shall take place at the time when the Product is made available for dispatch at MODNframe's premises. If MODNframe subsequently arranges transportation of the Product:

1. MODNframe does this as the Purchaser's agent;
2. the Purchaser must pay MODNframe all the costs of this service; and
3. the Purchaser shall indemnify MODNframe for

any liability incurred by MODNframe in providing this service.

8.3 Purchaser's obligations at site: If the Specific Terms provide that delivery shall be "Ex-works MODNframe" and the Purchaser is to take delivery of the Product from MODNframe' premises then, while at that site the Purchaser will, and will ensure that its employees, agents and subcontractors (if any), at all times comply with:

1. the relevant rules, policies and procedures adopted by

MODNframe in relation to the MODNframe site from which the Purchaser is to take delivery (as notified by MODNframe to the Purchaser from time to time);

1. all relevant policies and procedures of MODNframe, without limitation, those relating to health and safety, environmental and risk management;
2. all relevant legislation and regulations in force;
3. any safety instructions given by MODNframe

from time to time; and

1. all reasonable directions of MODNframe and will

notify MODNframe of any identifiable hazards which come to its attention in relation to the taking of delivery.

8.4 Delay by Purchaser: 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.

8.5 Estimate only: 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, taking into account weather conditions and safety matters, and MODNframe is not liable for any delay in delivery.

8.6 Unloading: In all circumstances (whether delivery is stated to be "Free into the Buyer's Store" or "Ex-works MODNframe" it shall be the responsibility of the Purchaser to immediately unIoad 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).

1. WARRANTIES

9.1 MODNframe's warranties: MODNframe warrants that:

1. all Product under the Agreement will comply in all material respects with the Product Specifications; and
2. except to the extent that the Product is produced

specifications provided by the Purchaser, the sale of the

Product to the Purchaser under the Agreement will not

infringe any patent, trade mark, copyright or registered design.

1. RISK AND OWNERSHIP

10.1 Risk: Subject to clause 8.4, risk of any loss, damage or deterioration of or to the Product passes to the Purchaser, upon delivery pursuant to section 8.

10.2 Ownership: 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:

1. pays the Amount Owing 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

1. resells the Product pursuant to the authority granted

by these terms.

10.3 Processed Product: Where the Product is processed prior to repayment of the Purchaser's Indebtedness, ownership of the Product and/or 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 Purchaser's obligations: While ownership of the Product or

Processed Goods remains with MODNframe:

1. the Purchaser must store them separately and clearly

identify them as belonging to MODNframe;

1. 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.
3. the Purchaser must advise MODNframe immediately of any Event of Default or any action by third parties (including any of its creditors) 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, without being responsible for any damage caused in doing so. 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 Application of payments: MODNframe may apply any

payments received from or on behalf of the Purchaser in reduction of the Purchaser's Indebtedness as MODNframe thinks fit.

10.6 Proceeds of sale: If the Purchaser resells or uses any Product or Processed Goods before ownership of the Product or the Processed Goods has passed to the Purchaser, the proceeds of such sale or use 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. The balance of the proceeds (if any) shall be the Purchaser's beneficial interest under that trust.

10.7 Action for price: MODNframe may bring an action for the price of the Product or Processed Goods sold even where ownership of the Product or any Processed Goods may not have passed to the Purchaser.

10.8 PPSA: In addition to the forgoing provisions of this section 10, pursuant to the Personal Property Securities Act 1999 ("the **PPSA Act**”):

1. The Purchaser acknowledges MODNframe is entitled to register a security interest in the Product,

including any proceeds of sale, pursuant to the PPSA Act; and

1. The Purchaser agrees that nothing in sections 114(IXa),

133 and 134 of the PPSA Act shall apply to the Agreement, or the security under the Agreement, and waives the Purchaser's rights under sections 121, 125, 129, 131, 132 and 148 of the PPSA Act.

1. PRODUCT GUARANTEES

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

1. if the Product is acquired by the Purchaser for business

purposes, the Purchaser agrees that the Consumer

Guarantees Act 1993 does not apply; and

1. 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.
	1. Business purposes: 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.
	2. No Express Guarantees: The Purchaser acknowledges that

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 No representations by Purchaser: 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 Indemnity: 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 Remedies: 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:

1. Defective Product which does not comply with the applicable Agreement shall at MODNframe's discretion be

repaired or replaced, or the price refunded.

1. 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 14 days following delivery and MODNframe is given the opportunity to inspect the Product.

1. No Product shall be returned unless MODNframe

has agreed in advance

1. 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 Owing.

1. MODNframe accepts no liability for any claim by

the Purchaser or any other person, including, without

limitation, any claim relating to or arising from:

1. 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

1. 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.

1. in any event, MODNframe's liability under any

claim shall not exceed the Product Price.

11.2 Contracting out: 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, and these terms are to be modified to the extent necessary to give effect to that intention.

1. RELATIONSHIP

12.1 Independent contractor: The relationship between MODNframe and the Purchaser is, and shall for all purposes be, that of a company and independent contractor, and nothing in the Agreement will be taken as constituting any other relationship.

12.2 Representations: The Purchaser acknowledges that, except to the extent otherwise expressly provided in the Agreement:

1. it is not the legal representative, agent, joint venture, or partner of MODNframe for any purpose; and
2. it has no right or authority to assume or create any obligations of any kind or to make any representations

or warranties, whether express or implied, for or on

behalf of MODNframe or to bind MODNframe in any respect.

1. CANCELLATION

13.1 Written consent required: Cancellation of orders will not be

permitted without the written consent of MODNframe.

13.2 Effect of cancellation: (Subject to clause 3.4) if MODNframe gives its written consent to the cancellation of a Purchase Order pursuant to clause 13.1, the Purchaser shall pay to MODNframe:

1. if MODNframe holds finished Product and the

time for delivery of that Product is not more than 30

days after the date of the cancellation, the Product Price

of that Product. Such payment is to be made on

delivery of the Product on the delivery date;

1. if MODNframe holds raw materials or has placed

orders for raw materials which cannot be cancelled and

such raw materials have been purchased or ordered

solely for the purpose of the relevant order and can only

be used for such purpose, the actual cost to MODNframe of such raw materials; and

1. if MODNframe holds goods other than raw

materials or finished Product which have been

produced solely for the purpose of an order pursuant to

a Purchase Order, the actual cost to MODNframe of

such goods.

13.3 Mitigation of payments: MODNframe will reduce the payment to be made by the Purchaser pursuant to clause 13.2 by allowing the Purchaser to deduct the fair value of any of the goods or materials which in MODNframe's opinion, MODNframe may reasonably be able to re-use, sell or otherwise dispose of. In respect of those goods or materials which MODNframe is not able to re-use, sell or otherwise dispose of, MODNframe will deliver those goods or materials to the Purchaser and the Purchaser shall pay for the goods or materials upon delivery. Upon such delivery, risk of loss and damage to those goods will pass to the Purchaser, and property in the goods will pass on payment.

13.4 Cancellation of order: If MODNframe consents to the cancellation of a Purchase Order pursuant to clause 3.4, then MODNframe will refund to the Purchaser the fair value of any of the goods or materials which in MODNframe’s opinion, MODNframe may reasonably be able to sell, re-use or otherwise dispose of. In respect of those goods or material which MODNframe is not able to re-use, sell or otherwise dispose of, MODNframe will deliver those goods or materials to the Purchaser and the Purchaser shall pay for the goods or materials upon delivery. Upon such delivery, risk of loss or damage to those goods will pass to the Purchaser, and property in the goods or materials will pass upon payment.

1. TERMINATION

14.1 General rights of termination: Without prejudice to any of the

right or remedy it may have, whether under the Agreement, under statute or otherwise, either MODNframe or the Purchaser may terminate the Agreement (including any Purchase Order or other Specific Terms) by written notice to the other party if:

1. the other party breaches any material obligation of that

party under the Agreement (including any Purchase Order or other Specific Terms); and

1. the breach is not capable of being remedied; or
2. 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

1. 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 Purchase Order or other Specific Terms) unless otherwise specified by the non-defaulting party in the relevant notice.

14.2 Survival: Termination of an Agreement shall not affect section 11, 14, 16, 20 and 21 or any other provisions of these Conditions of Sale 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.

14.3 Payment due: In the event that MODNframe terminates the applicable Agreement under clause 14.1 or clause 15.2, payment for any Product delivered up to the date of such termination shall immediately become due and payable.

14.4 Default interest: If the Purchaser does not pay the Product Price by the due date MODNframe may charge a default penalty 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.

14.5 MODNframe shall be entitled, by giving written notice to the Purchaser, to immediately suspend or terminate the Agreement (or part of it) if the Purchaser in the reasonable opinion of MODNframe has or may have carried on any fraudulent activity with respect to the Services being provided under the Agreement. This may include where the Purchaser has failed to follow all procedures laid down by MODNframe, or removed or assisted in the removal of property belonging to MODNframe or any third party without specific written authority from the owner of that property to do so, or has failed to complete and/or provide upon request, in a timely manner, full and detailed records required to be maintained in respect of the Services being provided.

1. FORCE MAJEURE
	1. Obligations suspended: 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:
2. 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
3. that party uses all reasonable endeavours to:
4. mitigate the effects of the Force Majeure Event on that party's obligations under the Agreement; and
5. 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.

15.2 Termination: lf 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 Purchase Order or other Specific Terms to the extent affected by the Force Majeure Event) by written notice to the other party. Termination of the Agreement under this clause shall automatically terminate every Purchase Order in existence at the time of termination, unless otherwise specified by the terminating party in the relevant notice. Termination of the Agreement (including any Purchase Order or other Specific Terms) under this clause shall not affect those provisions of the Agreement 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.

1. CONFIDENTIAL INFORMATION

16.1 Confidentiality: Except as required by law or by the rules of any applicable Stock Exchange, the Purchaser will ensure that neither it nor any of its employees, agents or subcontractors will, during or after the term of the Agreement, make any announcement or disclosure as to the subject matter or any of the terms of the Agreement, or use, exploit or disclose to any person any Confidential Information supplied directly or indirectly by MODNframe or any of its related or associated companies, or otherwise acquired by the Purchaser pursuant to the Agreement, without the prior written consent of MODNframe.

1. USE OF INFORMATION

17.1 Right to obtain information: The Purchaser agrees that MODNframe may obtain information about the Purchaser from the Purchaser or any other person (including all of MODNframe's Affiliates (the "MODNframe") and any credit or debt collection agencies) in the course of MODNframe's business, including credit assessment, debt collecting and direct marketing activities, and the Purchaser consents to any person providing MODNframe with such information.

17.2 Use of information: The Purchaser agrees that MODNframe may use any information it has about the Purchaser relating to the Purchaser's credit worthiness and, subject to any confidentiality agreement between the Purchaser and MODNframe, give that information to any other person, including any credit or debt collection agency and other members of the MODNframe, for credit assessment and debt collection purposes. The Purchaser agrees that any other information collected by MODNframe about the Purchaser may be accessed or collected for the use of any member of the MODNframe in the course of its business, including direct marketing activities.

17.3 Notification of change: The Purchaser must notify MODNframe of any change in circumstances that may affect the accuracy of the information provided by the Purchaser to MODNframe or the MODNframe.

17.4 Privacy Act 2020: If the Purchaser is an individual, i.e. a natural person, the Purchaser has rights under the Privacy Act 2020 to access and request the correction of any personal information which MODNframe holds about the Purchaser.

1. NOTICES

18.1 Service: Every notice or other communication given under or in connection with the Agreement will be in writing and addressed to the relevant party and delivered, posted by pre-paid registered mail or sent by email to the address or email address number of that party specified in the Specific Terms, or such other address or email address as is notified by that party to the other parties.

18.2 Receipt: Every notice or other communication sent by prepaid letter will be deemed to have been received when delivered personally or three days after it has been put into the post.

1. NO ASSIGNMENT

19.1 No assignment: The Purchaser may not assign any of its rights or obligations under the Agreement, except with the prior written consent of MODNframe.

19.2 Change of control: Any change in the effective management or control of the Purchaser or any parent company of the Purchaser, through whatever means, shall be deemed to be an assignment of the Agreement requiring the prior written consent of MODNframe.

19.3 Purchaser's obligations continue: The assignment by the

Purchaser of any of its benefits or obligations under an Agreement in whole or in part shall not relieve the Purchaser in any way whatsoever from its responsibility for due performance of the Agreement in accordance with its terms.

1. DISPUTE RESOLUTION
	1. Mediation: Either party may require any dispute between parties arising out of or in connection with the Agreement ("Dispute"), which has not been resolved within 14 days, to be referred to mediation. The mediator will be appointed by both parties or, where the parties cannot agree on a mediator within 14 days of a party referring a Dispute to mediation, appointed by the Chairperson of the New Zealand Dispute Resolution Centre or the Chairperson's nominee. The mediator will conduct the mediation in accordance with those guidelines agreed between the parties or, if the parties cannot agree on those guidelines within 14 days following appointment of the mediator, in accordance with the guidelines set by the mediator. The costs and expenses of the mediator shall be shared by the parties equally.

20.2 Interim or preliminary relief: The provisions of clause 20.1

shall not limit or affect the right of MODNframe or the Purchaser to apply to a court at any time for any interim or preliminary relief in respect of the Dispute or the right of MODNframe to seek to enforce payment obligations of the Purchaser under this Agreement by any means.

1. GENERAL
	1. Set-off: 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.
	2. Entire agreement: The Agreement in relation to the sale and purchase of the applicable Product constitutes the entire

agreement of the parties about its subject matter and any previous agreements, understandings and negotiations on that subject matter cease to have any effect. MODNframe and the Purchaser 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 (including, without limitation, any Purchase Order which the Purchaser directly or indirectly provides to MODNframe that has not been accepted by MODNframe) and that such other terms are rejected by MODNframe. For the avoidance of doubt, the conduct of MODNframe shall not constitute acceptance by MODNframe of any existing or subsequent terms set out in any document, which the Purchaser directly or indirectly provides to MODNframe.

* 1. Waiver: 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.
	2. Variations: No party shall vary the Agreement (or any Purchase Order or other Specific Terms accepted by MODNframe) except in writing signed on behalf of both MODNframe and the Purchaser.
	3. Binding Agreement: The provisions of these Conditions of Sale are not intended to be legally binding on MODNframe until the Agreement (or its ancillary components) has been signed by or otherwise approved by an authorised signatory on behalf of MODNframe.
	4. Governing law and jurisdiction: 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.