

Welcome to Modulate Group. We are committed to providing quality portable and modular buildings and ensuring a transparent and mutually beneficial relationship with all our customers. The following terms and conditions outline the key aspects of our business relationship, including our commitments to you and your responsibilities as our valued customer. These terms are designed to ensure a clear understanding of the process, from order placement to delivery and beyond, fostering a smooth and efficient collaboration.

1. Definitions –

- **Business Days:** The standard working days of the week, Monday through Friday, excluding public holidays and weekends.
- **Cancellation:** The conditions and implications of terminating the agreement prior to the completion of the contract.
- **Completion Date:** The date on which the Modulate building has been constructed and is prepared for delivery from our yard at 121 Woodstock St, or as otherwise mutually confirmed in written agreement between Modulate Group and the customer.
- **Compliance:** Adherence to all applicable laws, regulations, standards, and building codes relevant to the construction, installation, and operation of modular buildings.
- **Confidential Information:** Any non-public information, technical data, or know-how considered proprietary by Modulate Group or the customer.
- **Customisation:** Any changes or additions to the standard Modulate building design as requested by the customer.
- **Customer:** Refers to the individual or entity purchasing products or services from Modulate Group.
- **Defective:** Refers to any condition of the products that impedes their functionality or intended use, caused due to material or workmanship flaws.
- **Dispute Resolution:** The agreed method for resolving any disagreements or disputes that may arise between Modulate Group and the customer, including arbitration or mediation processes.
- **Force Majeure:** An event or circumstance beyond the reasonable control of either party that hinders, delays, or prevents the performance of their obligations under this Agreement. Such events include, but are not limited to, acts of God, natural disasters (e.g., floods, earthquakes, hurricanes), war, terrorism, labor disputes, strikes, government actions, pandemics, or any other unforeseen circumstances that could not have been reasonably anticipated or avoided.
- **Free on Board (FOB):** This term denotes a shipping arrangement where Modulate Group is responsible for delivering the goods to a specified location. Once the goods are placed on board the transportation vehicle from Modulate Group's manufacturing yard at 121 Woodstock St, Mayfield NSW 2304, the risk of loss or damage to the goods is transferred from Modulate Group to the customer.
- **Installation:** The process of assembling and securing the Modulate building on the customer's site.
- **Intellectual Property:** Refers to any and all intellectual property rights, including but not limited to, patents, trademarks, trade secrets, and copyrights, related to the products and services provided by Modulate Group.
- **Maintenance:** Regular and necessary actions to ensure the proper functioning and preservation of the Modulate building over time.
- **Modular Building:** Refers to a prefabricated structure, which may include containers and portables, and can consist of one or multiple sections called modules.
- **Modulate Building:** Refers to any portable, modular, or prefabricated structure manufactured by Modulate Group. This includes new standard-width containers, custom widened units, or structures built from scratch.
- **Modulate Group:** Refers to Modulate Group Pty Ltd (ABN 53 643 384 203).
- **New Build:** Refers to a Modulate building that is:
 - **Manufactured and Assembled:** Constructed entirely from new, unused materials, with every component of the building being brand new at the time of assembly, including all structural elements and fixtures. The only exception is standard width containers (2.44 meters wide), which are single trip containers. A single trip container is a shipping container that has been used once to transport goods, ensuring minimal wear while maintaining structural integrity and quality.

- **First-Time Use:** Provided for its first use, with no prior usage, leasing, or occupancy before delivery to the customer.
 - **Customisation and Specifications:** Built according to Modulate Group's latest specifications and customisation options, meeting current industry standards and customer requirements.
 - **Quality Assurance:** Subjected to Modulate Group's complete quality assurance process, ensuring compliance with standards for safety, durability, and functionality.
 - **Warranty Eligibility:** Eligible for the full scope of Modulate Group's warranties, as it is delivered in its original manufactured condition.
 - **PPSA:** Refers to the Personal Property Securities Act 2009 (Cth), which governs the registration and enforcement of security interests in personal property in Australia. It provides a framework for securing obligations through the registration of security interests on the Personal Property Securities Register (PPSR).
 - **Products:** Refers to Modulate buildings, including portable, modular and container buildings.
 - **Site Preparation:** Activities related to preparing the location where the Modulate building will be installed, including but not limited to, foundation work, utility connections, and land grading.
 - **Subcontractor:** A third party engaged by Modulate Group for specific parts of the work, such as manufacturing components, transportation, or installation services.
 - **Warranty Claim:** A formal request by the customer to address an issue covered under warranty.
 - **Warranty Period:** Refers to the time frame during which the warranties are valid.
 - **Wear and Tear:** Deterioration that occurs under normal use and conditions during the lifespan of the Modulate building.
2. **Dispute Resolutions** - Any disputes arising under or in connection with these terms and conditions shall be governed by the laws of New South Wales, Australia. The parties agree to submit to the exclusive jurisdiction of the courts of New South Wales.
3. **Payment Terms** – At Modulate Group, we have structured our payment process to ensure a smooth transaction for both parties:
- **Initial Deposit:** When you accept our quote, a 50% deposit of the total cost is required. This deposit must be made within 14 days. If we do not receive the deposit within this period, Modulate Group reserves the right to invalidate the quote or delay the project's completion date at our discretion. Note that your project will only be scheduled for production upon receipt of the deposit.
 - **Construction Plans (For New Builds):** Once your deposit is received, we will start preparing the construction plans for new builds. These plans will be sent to you for approval. It is important to approve them within 5 business days to avoid any production delays and to maintain your priority in our production schedule. Failure to approve within this timeframe may result in the loss of your reserved production slot.
 - **Final Payment:** The remaining 50% of the payment is due upon the completion of production. It is important to understand that the project will only be released for delivery after we have received the full payment.
 - **Alternative Payment Terms:** Modulate Group may consider different payment terms for larger projects, involving milestone-based payments. However, this is contingent on a prior written agreement specifying such terms.
 - **Consequences for Late Payment:**
 - **Suspension of Work:** In case of non-receipt of the initial deposit or final payment, Modulate Group reserves the right to suspend work on the project until payment is received. This includes halting production and delaying delivery schedules.
 - **Cancellation of Order:** If the initial deposit is not received within the specified 14 days, the quote and order may be cancelled, and the customer may need to initiate a new request for a quote.
 - **Withholding Delivery:** The completed product will not be delivered until the final payment is fully settled. If the final payment is delayed, the delivery schedule will be adjusted accordingly, and a delivery cancellation fee may apply (refer to 16. Delivery – Delivery Cancellation Fee).
 - **Payment Default:** If the customer fails to make any payment when due, Modulate Group reserves the right to charge a late payment fee of 5.0% per month on the outstanding balance. Additionally, the customer will bear any collection costs, including legal fees, incurred by Modulate Group to recover overdue amounts.

4. **Credit Terms** – Modulate Group offers credit terms subject to prior approval, which includes a credit check. We operate as a vendor, which means we expect payment upon issuing an invoice. Our standard practice is not to wait for customer payment before receiving our due amount, unless we have expressly agreed to this in writing beforehand. Additionally, as a vendor and not a subcontractor, we do not typically agree to retainage (holding back a portion of the payment) unless such an arrangement has been specifically agreed upon in writing in advance.
5. **Confidentiality** – Both parties agree to maintain the confidentiality of any proprietary or sensitive information disclosed during the term of the agreement. This obligation extends for three years post-termination of the agreement.
6. **Schedule** – At Modulate Group, we strive to adhere to our proposed completion dates. However, please be aware that various factors such as weather conditions, material availability, customer approvals, and regulatory constraints can impact our production schedules. The lead times we provide in our quotes are effective from the day we receive your initial deposit and, for new builds, once you have signed off on the construction plans. While we do our utmost to avoid delays, Modulate Group cannot be held responsible for any setbacks in production. We commit to communicating promptly should any delays become foreseeable. To facilitate a smooth project flow, we require customers to respond within one business day to any requests for approval or information. Delays in response may lead to an extension of the project completion date.
7. **Engineering Certificate** – Engineering certificates are provided only upon request and if part of the purchase agreement. If you require an engineering certificate for your Modulate building, please inform us, and we will provide you with a quote for this additional service. Modulate Group does not accept responsibility for any non-engineered designs supplied by the client. It's important that clients understand this to ensure that their needs are appropriately met.
8. **Warranty** – Modulate Group is committed to delivering high-quality products.
 - **General Warranty** - We provide a **one-year warranty** from the completion of production, covering defects in material and workmanship. This warranty includes:
 - **Exterior Finish:** Including paint and external cladding.
 - **Flooring:** Covering material and installation defects.
 - **Windows and Doors:** Functionality and installation.
 - **Electrical Systems:** Including wiring and electrical fixtures.
 - **Plumbing Systems:** Covering pipes, faucets, and other plumbing components.
 - **Roofing:** Ensuring it is free from material defects and workmanship issues.
 - **Equipment:** Any equipment included in the building is covered under warranty. For equipment not manufactured by Modulate Group, our warranty extends only as far as the warranty we receive from the original manufacturer. Modulate Group will assist in facilitating any claims with the manufacturer on behalf of the customer for equipment defects.
 - **Structural Warranty** - Modulate Group takes pride in the durability and quality of our buildings. To this end, we offer the following structural warranties:
 - **Modulate Buildings:** For all new Modulate buildings, we offer a 10-year structural warranty. This warranty includes:
 - **Container Integrity:** Ensuring the robustness of the container structure.
 - **Wall Structures:** Ensuring the structural soundness of these critical components.
 - **Load-Bearing Elements:** Covering structural supports and beams.
 - **Under this warranty:**
 - **Exclusions:** This warranty does not cover issues caused by misuse, improper handling, or external factors beyond Modulate Group's control. Specifically, as container buildings are susceptible to damage due to frequent relocation, damages resulting from movement, transport, or repositioning are not covered. Additionally, any modifications made by the client or third parties that compromise the structural integrity or intended use of the building are also excluded. This ensures the warranty focuses on the inherent quality of our product, not externalities or alterations post-delivery.
 - **Liability Limit:** Modulate Group's responsibility under this warranty is primarily limited to replacing defective parts, which will be provided Free On Board (FOB) at our manufacturing plant located at 121 Woodstock St, Mayfield NSW 2304.

- **Repair Discretion:** At Modulate Group's discretion, we may choose the most effective method to address warranty issues. This could include, but is not limited to, sending replacement parts, conducting repairs at our facility, or deploying our technicians directly to the client's location to perform repairs. Our decision will be based on the nature of the defect and the most efficient way to ensure your satisfaction and the integrity of our product.
- **Extended Equipment Warranty:** Equipment supplied by third parties carries the warranty offered by the original manufacturer. Modulate Group will facilitate any claims but is not directly responsible for repair or replacement beyond this scope.
- **Customer's Responsibility:** In cases where it is determined that defective products or parts need to be sent back to us, the customer is responsible for the shipping costs to and from our facility. We will endeavor to make this process as smooth and cost-effective as possible.
- **Production Compliance:** While we ensure that Modulate builds are produced generally in line with the approved work instructions, we reserve the right to make necessary adjustments to effectively suit the specific needs of the project. These adjustments will always adhere to our high standards of quality and functionality.

- **Process for Making a Warranty Claim**

- **Notification:** If you encounter a structural issue with your building, please notify Modulate Group immediately. This can be done via email (hello@modulategroup.au), phone (1300 278 119), or through our website (www.modulategroup.au), providing details of the issue and your contact information.
- **Documentation:** Provide documentation of the issue, which may include photos, descriptions, and any relevant purchase (Quote Number and Modulate building's serial number) and delivery information.
- **Assessment:** Modulate Group will review the claim and may conduct an inspection to assess the issue.
- **Resolution:** If the claim falls under the warranty, Modulate Group will arrange for the necessary repairs or replacements as covered under the warranty terms.

9. Force Majeure – If either party is prevented, hindered, or delayed in the performance of its obligations under this Agreement due to a Force Majeure Event, the affected party shall notify the other party in writing as soon as reasonably practicable, providing details of the event and its expected duration. During the period of the Force Majeure Event:

- The affected party's obligations under this Agreement shall be suspended to the extent they are affected by the event.
- The parties shall work together in good faith to mitigate the impact of the Force Majeure Event and resume performance of the Agreement as soon as reasonably possible.

If the Force Majeure Event persists for an extended period and prevents either party from fulfilling its obligations under the Agreement, either party may terminate the Agreement by providing 30 days' written notice to the other party. In such an event, Modulate Group will refund any payments made for undelivered goods, minus any reasonable costs already incurred up to the date of termination.

The parties agree that no claim for damages, penalties, or losses shall arise as a result of a termination under this clause, except as provided above.

10. Retention of Title

- **Retention of Ownership:**

- Modulate Group retains full legal and equitable title to the Goods supplied under this Agreement until all amounts owing are paid in full, including:
 - The price of the Goods.
 - Any associated costs, including costs for customisation, manufacturing, installation, storage, or other services provided in relation to the Goods.

- **Responsibilities Before Transfer of Ownership:**

- Until title in the Goods passes to the Customer:
 - The Customer acknowledges that the Goods remain the property of Modulate Group.

- The Customer must take all reasonable steps to ensure the Goods are identifiable as Modulate Group's property unless they have been installed, integrated, or otherwise made indistinguishable as part of a larger project.
 - The Customer must not sell, transfer, or encumber the Goods without Modulate Group's prior written consent.
 - **Right to Reclaim Goods and Recover Costs:**
 - If the Customer fails to make payment by the due date or becomes insolvent, Modulate Group has the right to:
 - Reclaim the Goods, including by dismantling installed Goods if necessary and practicable.
 - Recover from the Customer all reasonable costs associated with:
 - Reclaiming the Goods.
 - Work performed, including manufacturing, customisation, or installation of the Goods.
 - Storage, dismantling, or other related services.
 - **Passing of Risk:**
 - Risk in the Goods passes to the Customer upon delivery. The Customer is responsible for ensuring the Goods from the time of delivery, including during and after installation.
 - **PPSR Registration:**
 - The Customer acknowledges that Modulate Group may register a security interest in the Goods under the Personal Property Securities Act 2009 (Cth) and agrees to provide all necessary information to facilitate such registration.
- 11. Returns** – Modulate Group understands that there may be circumstances requiring the return of our products. In such cases, the following policy applies:
- **Restocking Fee:** If you need to return a Modulate building to us, please be aware that a restocking fee may apply. The fee can range up to 100% of the product's value, depending on the level of customisation involved. This fee compensates for the cost and effort put into customising the unit to your specific requirements.
 - **Customisation Impact:** The more customised the product, the higher the restocking fee may be, as highly customised units are less likely to be repurposed or resold.
 - **Delivery Fee:** Please note that delivery fees are non-refundable. This is because the delivery cost is incurred as a separate service, completed upon the delivery of the product.
- 12. Limitation of Liability** - Modulate Group is dedicated to providing high-quality products and services. However, in the unlikely event of any issues, our maximum liability is limited to the total value of your contract with us, excluding delivery charges. This means the maximum amount you can claim in damages will not exceed what you have paid for our goods and/or services. Modulate Group is not liable for any indirect, incidental, or consequential damages, including but not limited to loss of profit, revenue, or business opportunities, arising out of or in connection with the agreement or the products/services provided.
- 13. Liquidated Damages** – Modulate Group generally does not agree to liquidated damages. If liquidated damages are a requirement for you, this must be explicitly agreed upon in writing before we accept any contract or purchase order. This ensures both parties have a clear understanding of any such terms before proceeding. Should the customer breach our terms and conditions, Modulate Group reserves the right to claim liquidated damages up to 10% of the contract value.
- 14. Credit Card Fee** - We accept credit cards for your convenience. Please note that any processing fees charged by the credit card provider will be passed on to the customer. These fees vary depending on the provider and card type.
- 15. Goods and Services Tax (GST)** – Modulate Group is responsible for collecting all applicable goods and services taxes on our sales. If you are exempt from these taxes, please provide us with the necessary documentation or formally agree in writing to assume liability for paying these taxes.
- 16. Storage Fee** – If Modulate Buildings are not shipped from our facility within 14 days following project completion, a storage fee will apply, unless otherwise agreed in writing. This fee is \$50/day for each Modulate Building. Modulate Buildings will only be released for shipment once all accumulated storage fees and any other outstanding amounts have been paid.

17. Modulate Building Condition – All Modulate buildings supplied by Modulate Group are new builds, unless specifically stated otherwise in the quote or in writing.

18. Projects Requiring Permits and Compliance – For installations requiring permits and adherence to local zoning regulations, it is the responsibility of the customer—not Modulate Group—to obtain the necessary permits and ensure compliance. We advise checking local regulations and obtaining all necessary permissions before installing a Modulate building.

19. Delivery –

- **Standard Delivery Terms:** Our Modulate buildings are sold ex works (EXW). Unless specified otherwise, the customer is responsible for arranging transport and unloading the Modulate building from the delivery vehicles. Modulate Group is not liable for any damages that occur during transportation.
- **Included Delivery Services:** If delivery is included in your quote, Modulate Group will handle transportation arrangements. We will work closely with you to ensure smooth delivery. You are responsible for ensuring that the site is ready and accessible on the scheduled delivery date.
 - **Special Requirements:** Please communicate any special transportation or delivery needs to us before finalizing your purchase order.
 - **Client Responsibility for Damage:** If any damage occurs due to inaccurate or incomplete information provided by you, or due to site conditions, the responsibility for such damage lies with you.
 - **Modulate Group's Responsibilities:** When delivery is included in the quote, Modulate Group will handle all aspects of transportation. This includes arranging for a suitable vehicle, ensuring safe loading, and coordinating with the customer for a delivery schedule. Unloading will not be Modulate Group's responsibility unless explicitly agreed upon in writing prior to delivery. Our team will also provide timely updates on the transportation status.
 - **Delivery Cancellation Fee:** If the transportation of the Modulate building needs to be cancelled within 5 business days prior to the scheduled delivery due to the customer not paying the final bill, being unprepared to receive the delivery, or for any other reason falling under the customer's responsibility, Modulate Group reserves the right to charge the following cancellation fees:
 - **Deliveries within New South Wales:** A cancellation fee of \$1,000 + GST per Modulate building.
 - **Deliveries to Queensland, Victoria and South Australia:** A cancellation fee of \$2,000 + GST per Modulate building.
 - **Deliveries to Western Australia, Northern Territory and Tasmania:** A cancellation fee of \$3,000 + GST per Modulate building.
 - **Deliveries Outside Australia:** A cancellation fee of \$4,000 + GST per Modulate building.
 - **Note:** The cancellation fee, along with any other outstanding bills, must be paid before Modulate Group will reschedule the delivery date and release the Modulate building.
 - **Insurance Coverage:** During transportation, Modulate Group will ensure that the Modulate building is covered by transit insurance. This insurance protects against damage or loss while in transit, offering peace of mind to both Modulate Group and the customer.

20. Change Orders –

- **Issuance and Billing:** Modulate Group reserves the right to review and consider any change orders submitted after production has commenced (i.e., following receipt of the initial deposit and approval of construction plans). Any approved changes will incur additional costs and be billed to the customer accordingly.
- **Drafting for Changes:**

Any additional drafting or documentation work required to accommodate changes or variations in scope will incur additional charges. Modulate Group will notify the customer in writing of the drafting costs and seek approval before proceeding. Drafting charges will be determined based on the complexity and extent of the changes.
- **Advance Payment for Changes:**
 - For change orders valued at less than \$50,000 + GST, full payment is required upfront before work commences.
 - For change orders valued at \$50,000 + GST or more, payment will be split into 50% upfront and 50% on completion and prior to delivery.

- **Discretion on Billing:** Modulate Group reserves the right to waive billing requirements for minor changes that do not significantly impact the overall project price or schedule.

21. Customer Furnished Material –

- **Responsibility for Provided Materials:** Modulate Group will not be liable for materials supplied by the customer. If such materials are necessary for project completion, it's the customer's responsibility to deliver them on time, with all required documentation.
- **Impact on Schedule:** Delays in delivering customer-furnished materials may adversely affect the project timeline.

22. Quality Inspections – Requests to inspect work in progress or completed work at our facilities must be submitted in writing and arranged at least **2 business days** in advance through mutual agreement.

23. Deliverables –

- **Scope of Deliverables:** The only items required to fulfill your order are the Modulate building as specified in your quote. These are the primary deliverables for satisfying the purchase order or contract.
- **Additional Deliverables:** Any other deliverables beyond the Modulate building must be agreed upon in writing by Modulate Group in advance.
- **Operation and Maintenance Manuals:** While we do not typically provide operation and maintenance manuals as standard, upon request, we can supply third-party manuals for all installed components in the Modulate building that come with such documentation.
- **Clarification of Additional Deliverables:** Additional deliverables beyond the standard Modulate building might include:
 - Custom-built furniture or fittings specific to the customer's request.
 - Specialised electrical or plumbing work beyond the standard installation.
 - External structures such as ramps, decking, or awnings that are not part of the standard building design.

24. Limitation of agreement –

- **Automatic Acceptance of Terms:** By accepting a quote provided by Modulate Group, the customer agrees to be bound by these standard terms and conditions. Any deviation or additional terms requested by the customer must be explicitly agreed to in writing by both parties to be valid.
- **Changes to Agreement:** Any modifications to this agreement must be made in writing and must be signed by both parties to be valid. This ensures that all changes are clearly documented and mutually agreed upon, avoiding any misunderstandings or disputes.