

## TERMS & CONDITIONS OF TRADE

### 1. DEFINITIONS

- 1.1 'Moduline' shall mean Metal Rollforming Limited, or any agents or employees thereof.
- 1.2 'Customer' shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Moduline.
- 1.3 'Products' shall mean:
  - 1.3.1 all Products of the general description specified on the front of this agreement and supplied by Moduline to the Customer; and
  - 1.3.2 all Products supplied by Moduline to the Customer; and
  - 1.3.3 all inventory of the Customer that is supplied by Moduline; and
  - 1.3.4 all Products supplied by Moduline and further identified in any invoice issued by Moduline to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
  - 1.3.5 all Products that are marked as having been supplied by Moduline or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Moduline; and
  - 1.3.6 all of the Customer's present and after-acquired Products that Moduline has performed work on or to or in which goods or materials supplied or financed by Moduline have been attached or incorporated.
- 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 'Products and Services' shall mean all products, goods, services and advice provided by Moduline to the Customer and shall include without limitation the manufacture, measure, quote, sale and installation of all fencing products and associated products and services and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Products and Services by Moduline to the Customer.
- 1.5 'Price' shall mean the cost of the Products and Services as agreed between Moduline and the Customer and includes all disbursements eg charges Moduline pay to others on the Customer's behalf subject to clause 4 of this contract.

### 2. ACCEPTANCE

- 2.1 Any instructions received by Moduline from the Customer for the supply of Products and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

### 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Moduline to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Products and Services provided by Moduline to any other party.
- 3.2 The Customer authorises Moduline to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993. \_Ref9723274.

### 4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Products and Services shall be deemed to be sold at the current amount as such Products and Services are sold by Moduline at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products and Services that is beyond the control of Moduline between the date of the contract and delivery of the Products and Services.

### 5. PAYMENT

- 5.1 Payment for Products and Services shall be made in full before dispatch for supply only fences, and on completion for installed fences.
- 5.2 Any variation from these terms can only be made by Moduline on the quote.
- 5.3 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.4 Any expenses, disbursements and legal costs incurred by Moduline in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.5 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

### 6. QUOTATION

- 6.1 Where a quotation is given by Moduline for Products and Services:
  - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
  - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
  - 6.1.3 Moduline reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Products and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products and Services.

### 7. RISK

- 7.1 The Products and Services remain at Moduline's risk until delivery to the Customer.
- 7.2 Delivery of Products and Services shall be deemed

complete when Moduline gives possession of the Products and Services directly to the Customer or possession of the Products and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.

- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to Moduline making time of the essence.

- 7.4 Where Moduline delivers Products and Services to the Customer by instalments and Moduline fails to deliver or supply one or more instalments the Customer shall not have the right to cancel the contract but shall have the right to claim compensation as a severable breach.

### 8. AGENCY

- 8.1 The Customer authorises Moduline to contract either as principal or agent for the provision of Products and Services that are the matter of this contract.

- 8.2 Where Moduline enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

### 9. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 9.1 Title in any Products and Services supplied by Moduline passes to the Customer only when the Customer has made payment in full for all Products and Services provided by Moduline and of all other sums due to Moduline by the Customer on any account whatsoever. Until all sums due to Moduline by the Customer have been paid in full, Moduline has a security interest in all Products and Services.

- 9.2 If the Products and Services are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Products and Services shall remain with Moduline until the Customer has made payment for all Products and Services, and where those Products and Services are mixed with other property so as to be part of or a constituent of any new Products and Services, title to these new Products and Services shall be deemed to be assigned to Moduline as security for the full satisfaction by the Customer of the full amount owing between Moduline and Customer.

- 9.3 The Customer gives irrevocable authority to Moduline to enter any premises occupied by the Customer or on which Products and Services are situated at any reasonable time after default by the Customer or before default if Moduline believes a default is likely and to remove and repossess any Products and Services and any other property to which Products and Services are attached or in which Products and Services are incorporated. Moduline shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Moduline may either resell any repossessed Products and Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and Services and credit the Customer's account with the invoice value thereof less such sum as Moduline reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

- 9.4 Where Products and Services are retained by Moduline pursuant to clause 9.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ('PPSA') and to object under s.121 of the PPSA.

- 9.5 The following shall constitute defaults by the Customer:

- 9.5.1 Non payment of any sum by the due date.

- 9.5.2 The Customer intimates that it will not pay any sum by the due date.

- 9.5.3 Any Products and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products and Services.

- 9.5.4 Any Products and Services in the possession of the Customer are materially damaged while any sum due from the Customer to Moduline remains unpaid.

- 9.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.

- 9.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.

- 9.5.7 Any material adverse change in the financial position of the Customer.

- 9.6 If the Credit Repossession Act applies to any transaction between the Customer and Moduline, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

### 10. RETURN OF GOODS

- 10.1 The Customer shall be deemed to have accepted the Products and Services provided unless the Customer notifies Moduline otherwise within seven (7) days of delivery of the Products and Services to the Customer.

- 10.2 No Products and Services will be accepted for return by Moduline without prior approval of Moduline. Any Products accepted for return must be in original and resaleable condition.

- 10.3 If the Products are accepted for return the Customer shall upon obtaining the prior approval of

Moduline pay for the delivery of the returned Products to Moduline whereby the Customer shall be entitled to a credit for the purchase price of any such Products less a 15% restocking fee. Return freight and insurance costs must be prepaid by the Customer.

### 11. LIABILITY

- 11.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Moduline which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Moduline, Moduline's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

- 11.2 Except as otherwise provided by clause 11.1 Moduline shall not be liable for:

- 11.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products and Services provided by Moduline to the Customer; and

- 11.2.2 The Customer shall indemnify Moduline against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Moduline or otherwise, brought by any person in connection with any matter, act, omission, or error by Moduline its agents or employees in connection with the Products and Services.

### C12212. CONSUMER GUARANTEES ACT

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires products and services from Moduline for the purposes of a business in terms of section 2 and 43 of that Act.

### 13. WARRANTY

- 13.1 Any written warranty that Moduline provide to the Customer will also form part of these terms and conditions of trade.

- 13.2 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to the Products and Services except where goods are supplied or services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.

- 13.3 For Products and Services where the customer specifies or installs Moduline does not provide any warranty that the Products and Services are fit and suitable for the purpose for which they are required by the customer and shall not be liable if they are not.

### 14. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 14.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Moduline agreeing to supply Products and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Moduline the payment of any and all monies now or hereafter owed by the Customer to Moduline and indemnify Moduline against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

### 15. CANCELLATION

- 15.1 Moduline shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of Products and Services to the Customer if the Customer fails to pay any money owing after the due date or the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.

- 15.2 Any cancellation or suspension of this agreement shall not affect Moduline's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to Moduline under this contract.

### 16. MISCELLANEOUS

- 16.1 Moduline shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

- 16.2 Failure by Moduline to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Moduline has under this contract.

- 16.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

- 16.4 The client shall not assign all or any of its rights or obligations under this contract without the written consent of Moduline.

- 16.5 Where these terms and conditions of trade are at variance with the order or instructions from the Customer these terms and conditions of trade shall prevail.