



Terms and Conditions

7th June, 2021

Phone +61 2 8116 9000 or visit modena360.com.au

© Copyright 2021 Modena360. All rights reserved.

Statement of Conditions

The information in this document has been reviewed and is believed to be accurate. However, neither Modena360 nor its affiliates assume any responsibility for inaccuracies, errors, or omissions that may be contained herein. In no event will Modena360 or its affiliates be liable for direct, indirect, special, incidental, or consequential damages resulting from any defect or omission in this document, even if advised of the possibility of such damages.

Modena360 reserves the right to make improvements or changes to this document and information contained within, and to the products and services described at any time, without notice or obligation.

Commercial in Confidence

All information supplied as part of this response, including any attachments, are to be considered commercial-in-confidence.

1. Definitions

1.1 “Modena360” shall mean Modena Information Solutions Pty Limited its successors and assigns or any person acting on behalf of and with the authority of Modena Information Solutions Pty Limited.

1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Modena360 to the Client.

1.3 “Guarantor” means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.

1.4 “Equipment” shall mean all Equipment including any accessories supplied on hire by Modena360 to the Client (and where the context so permits shall include any supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Modena360 to the Client.

1.5 “Goods” shall mean all Goods supplied by Modena360 to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Modena360 to the Client.

1.6 “Services” shall mean all Services supplied by Modena360 to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

1.7 “Price” shall mean the Price payable for the Goods as agreed between Modena360 and the Client in accordance with clause 4 of this contract.

1.8 “Consumer” a person who buys: any type of goods or services costing up to \$50,000 (or any other amount stated in the ACL Regulations); goods or services costing more than \$50,000 which would normally be for personal, domestic or household use.

2. The Competition and Consumer Act 2010 (“CCA”) and The Australian Consumer Law (“ACL”)

2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA and ACL (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

2.2 Clause 10 (Defects), and clause 11 (Warranty) may NOT apply to the Client where the Client is purchasing Goods or Services not for resale or hire where the Price of the Goods or Services does not exceed \$50,000, or where the Price of the Goods or Services does exceed \$50,000 and are of a kind ordinarily acquired for personal, domestic or household use or consumption, or where the Client is in any other way a consumer within the meaning of the CCA or ACL.

3. Acceptance

3.1 Any instructions received by Modena360 from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by Modena360 shall constitute acceptance of the terms and conditions contained herein.

3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.

3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Modena360.

3.4 The Client shall give Modena360 not less than seven (7) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Modena360 as a result of the Client's failure to comply with this clause.

3.5 Goods are supplied by Modena360 only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price and Payment

4.1 At Modena360's sole discretion the Price shall be either:

(a) as indicated on invoices provided by Modena360 to the Client in respect of Goods supplied; or

(b) Modena360's current price at the date of delivery of the Goods according to Modena360's current Price list; or

(c) Modena360's quoted Price (subject to clause 4.2) which shall be binding upon Modena360 provided that the Client shall accept Modena360's quotation in writing within seven (7) days.

4.2 Modena360 reserves the right to change the Price in the event of a variation to Modena360's quotation.

4.3 At Modena360's sole discretion a non-refundable deposit may be required.

4.4 At Modena360's sole discretion:

(a) payment shall be due on delivery of the Goods; or

(b) payment shall be due before delivery of the Goods; or

(c) payment for approved Clients shall be due seven (7) days following the end of the month in which a statement is posted or emailed to the Client's address or address for notices.

4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

4.6 Payment will be made by credit card (plus a surcharge of up to three percent (3%) of the Price), or by direct credit, or by any other method as agreed to between the Client and Modena360.

4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4.8 VOIP customers will be charged according to provided plan, with the exception of 1800 numbers which will be free and 13/1300 numbers which will be charged at 37.5c inc GST.

5. Delivery of Goods

5.1 At Modena360's sole discretion delivery of the Goods shall take place when:

- (a) the Client takes possession of the Goods at Modena360's address; or
- (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by Modena360 or Modena360's nominated carrier).

5.2 At Modena360's sole discretion the costs of delivery are:

- (a) included in the Price; or
- (b) in addition to the Price.

5.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Modena360 shall be entitled to charge a reasonable fee for redelivery.

5.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

5.5 The failure of Modena360 to deliver shall not entitle either party to treat this contract as repudiated.

5.6 Modena360 shall not be liable for any loss or damage whatsoever due to failure by Modena360 to deliver the Goods (or any of them) promptly or at all where due to circumstances beyond the control of Modena360.

6. Risk

6.1 If Modena360 retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.

6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Modena360 is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Modena360 is sufficient evidence of Modena360's rights to receive the insurance proceeds without the need for any person dealing with Modena360 to make further enquiries.

6.3 Where the Client expressly requests Modena360 to leave Goods outside Modena360's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.

7. Title

7.1 Modena360 and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid Modena360 all amounts owing for the particular Goods; and

(b) the Client has met all other obligations due by the Client to Modena360 in respect of all contracts between Modena360 and the Client.

7.2 Receipt by Modena360 of any form of payment shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Modena360's ownership or rights in respect of the Goods shall continue.

7.3 It is further agreed that:

(a) where practicable the Goods shall be kept separate and identifiable until Modena360 shall have received payment and all other obligations of the Client are met; and

(b) until such time as ownership of the Goods shall pass from Modena360 to the Client Modena360 may give notice in writing to the Client to return the Goods or any of them to Modena360. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and

(c) Modena360 shall have the right of stopping the Goods in transit whether or not delivery has been made; and

(d) if the Client fails to return the Goods to Modena360 then Modena360 or Modena360's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods; and

(e) the Client is only a bailee of the Goods and until such time as Modena360 has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to Modena360 for the Goods, on trust for Modena360; and

(f) the Client shall not deal with the money of Modena360 in any way which may be adverse to Modena360; and

(g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Modena360; and

(h) Modena360 can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and

(i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that Modena360 will be the owner of the end products.

8. Personal Property Securities Act 2009 ("PPSA")

8.1 In this clause:

(a) financing statement has the meaning given to it by the PPSA;

(b) financing change statement has the meaning given to it by the PPSA;

(c) security agreement means the security agreement under the PPSA created between the Client and Modena360 by these terms and conditions; and

(d) security interest has the meaning given to it by the PPSA.

8.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions:

(a) constitute a security agreement for the purposes of the PPSA; and

(b) create a security interest in:

- (i) all Goods previously supplied by Modena360 to the Client (if any);
- (ii) all Goods that will be supplied in the future by Modena360 to the Client.

8.3 The Client undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Modena360 may reasonably require to:

(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);

(b) indemnify, and upon demand reimburse, Modena360 for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of Modena360;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Modena360; and

(e) immediately advise Modena360 of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

8.4 Modena360 and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

8.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

8.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

8.7 Unless otherwise agreed to in writing by Modena360, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

8.8 The Client shall unconditionally ratify any actions taken by Modena360 under clauses 8.3 to 8.5.

9. Security and Charge

9.1 Despite anything to the contrary contained herein or any other rights which Modena360 may have howsoever:

(a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Modena360 or Modena360's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that Modena360 (or Modena360's nominee) shall be entitled to lodge where appropriate

a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

(b) should Modena360 elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Modena360 from and against all Modena360's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Modena360 or Modena360's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 9.1.

10. Defects

10.1 The Client shall inspect the Goods on delivery and shall within five (5) days of delivery (time being of the essence) notify Modena360 of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Modena360 an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Modena360 has agreed in writing that the Client is entitled to reject, Modena360's liability is limited to either (at Modena360's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Competition and Consumer Act 2010 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.

10.2 Goods will not be accepted for return other than in accordance with 10.1 above.

11. Warranty

11.1 For Goods not manufactured by Modena360, the warranty shall be the current warranty provided by the Manufacturer of the Goods. Modena360 shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the Manufacturer of the Goods. Modena360 will act as the Return to Base point for hardware and software unless otherwise indicated by the Manufacturer or Supplier. In either case, the Client is responsible for shipping or freight costs unless otherwise agreed by Modena360, Manufacturer or Supplier.

12. Intellectual Property

12.1 Where Modena360 has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in Modena360, and shall only be used by the Client at Modena360's discretion.

12.2 The Client warrants that all designs or instructions to Modena360 will not cause Modena360 to infringe any patent, registered design or trademark in the execution

of the Client's order and the Client agrees to indemnify Modena360 against any action taken by a third party against Modena360 in respect of any such infringement.

12.3 The Client agrees that Modena360 may use any documents, designs, drawings or Goods created by Modena360 for the purposes of advertising, marketing, or entry into any competition.

13. Default and Consequences of Default

13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of ten percent (10%) per calendar month (and at Modena360's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgement.

13.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Modena360.

13.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Modena360 from and against all costs and disbursements incurred by Modena360 in pursuing the debt including legal costs of a solicitor and own client basis and Modena360's collection agency costs.

13.4 Without prejudice to any other remedies Modena360 may have, if at any time the Client is in breach of any obligation (including those relating to payment), Modena360 may suspend or terminate the supply of Goods or Services to the Client and any of its other obligations under the terms and conditions. Modena360 will not be liable to the Client for any loss or damage the Client suffers because Modena360 has exercised its rights under this clause.

13.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

13.6 Without prejudice to Modena360's other remedies at law Modena360 shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Modena360 shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to Modena360 becomes overdue, or in Modena360's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

14. Cancellation

14.1 Modena360 may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Modena360 shall repay to the Client any sums paid in respect of the Price. Modena360 shall not be liable for any

loss or damage whatsoever arising from such cancellation.

14.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by Modena360 (including, but not limited to, any loss of profits) up to the time of cancellation.

14.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

15. Privacy Act 1988

15.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for Modena360 to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Modena360.

15.2 The Client agrees that Modena360 may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client.

The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

15.3 The Client consents to Modena360 being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

15.4 The Client agrees that personal credit information provided may be used and retained by Modena360 for the following purposes (and for other purposes as shall be agreed between the Client and Modena360 or required by law from time to time):

- (a) the provision of Goods; and/or
- (b) the marketing of Goods by Modena360, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.

15.5 Modena360 may give information about the Client to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Client;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

15.6 The information given to the credit reporting agency may include:

- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
- (b) details concerning the Client's application for credit or commercial credit and the amount requested;
- (c) advise that Modena360 is a current credit provider to the Client;
- (d) advise of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of Modena360, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Clients credit obligations);
- (g) that credit provided to the Client by Modena360 has been paid or otherwise discharged.

16. Unpaid Modena360's Rights

16.1 Where the Client has left any item with Modena360 for repair, modification, exchange or for Modena360 to perform any other Service in relation to the item and Modena360 has not received or been tendered the whole of the Price, or the payment has been dishonoured, Modena360 shall have:

- (a) a lien on the item;
- (b) the right to retain the item for the Price while Modena360 is in possession of the item;
- (c) a right to sell the item.

16.2 The lien of Modena360 shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

17. Equipment Hire

17.1 The Equipment shall at all times remain the property of Modena360 and is returnable on demand by Modena360. In the event that the Equipment is not returned to Modena360 in the condition in which it was delivered Modena360 retains the right to charge the Client the full cost of repairing the Equipment. In the event Equipment is not returned at all Modena360 shall have right to charge the Client the full cost of replacing the Equipment.

17.2 The Client shall;

- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
- (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
- (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Modena360 to the Client.

17.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, Modena360's interest in the Equipment and agrees to indemnify Modena360 against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

18. General

18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

18.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.

18.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.

18.4 Modena360 shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Modena360 of these terms and conditions.

18.5 In the event of any breach of this contract by Modena360 the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.

18.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Modena360 nor to withhold payment of any invoice because part of that invoice is in dispute.

18.7 Modena360 may license or sub-contract all or any part of its rights and obligations without the Client's consent.

18.8 The Client agrees that Modena360 may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Modena360 notifies the Client of such change. The Client shall be under no obligation to accept such changes except where Modena360 supplies further Goods to the Client and the Client accepts such Goods.

18.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

18.10 The failure by Modena360 to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Modena360's right to subsequently enforce that provision.