

## PURCHASE ORDER TERMS AND CONDITIONS

**1. GENERAL.** This Purchase Order ("Order"), together with any specifications, scope of work, delivery schedule, or other documents referenced herein or attached hereto ("Additional Documents") constitutes the COMPETE AND FINAL AGREEMENT between ModSpace Financial Services Canada, LTD ("Buyer") and Vendor. This Order may not be modified or superseded except by written agreement signed by Buyer's authorized representative, notwithstanding any additional or other proposals or terms and conditions which may now or in the future appear on Vendor's invoices, quotations, acknowledgment or other forms (notification of objection thereto being given hereby), and notwithstanding any acceptance of shipments, payments or other similar acts of Buyer. Any shipment, delivery or other tender of performance of Vendor shall be taken as Vendor's acceptance of these Terms and Conditions. Buyer may withdraw this Order, without liability or expense, at any time prior to receipt of Vendor's unconditional written acceptance hereof.

**2. PERFORMANCE.** Buyer shall have the right at any time to change this Order as to specifications, scope of work, delivery schedule or place, packaging or means of shipment ("Change Order"). Performance by Vendor reflecting any Change Order or failure to give Buyer notice in response to any Change Order within five (5) days, whichever occurs first, shall be deemed acceptance of the Change Order without any price, time or other adjustment. Vendor shall make no change in the goods, materials, equipment, services or labor covered hereby (collectively the "Vendor Obligations"), whether by change in or departure from specifications, design, manufacture, timeframe of performance, process, machinery, dies and molds, standard or method, material composition, delivery, packaging, means of shipment or transportation, current federal or provincial building code, Federal Highway Transportation Authority compliance without Buyer's prior written consent. Time and quantity are of the essence. Unless otherwise specified, delivery times specified are the dates of completion of for the Vendor Obligations at Buyer's or Buyer's customer ("End User") designated delivery location. Vendor shall transport, pack, mail, label, ship and deliver all Vendor Obligations in appropriate and suitable manner selected by Vendor to ensure the least damage to the Vendor Obligations at the lowest transportation cost for which Buyer is responsible, if any, in the absence of specific instructions. Buyer's count of the Vendor Obligations shall be final as to all shipments not accompanied by a packing list. Vendor shall inform Buyer immediately of any occurrence expected to result in any change in delivery time or quantity.

**3. INSURANCE AND INDEMNIFICATION.** To the extent that, in connection with the Vendor Obligations or otherwise, Vendor's employees, associates, consultants, agents or other representatives ("Vendor's Agents") are on or present at any premises of Buyer or End User, Vendor shall be responsible for the acts and omissions of Vendor's Agents within or about such premises and agrees to indemnify, defend and hold Buyer and End User ("Indemnitees") harmless from liability for any claims, loss or damages to property or injuries or death to persons arising out of acts or omissions of Vendor's Agents at or about such premises, including without limitation (i) the failure of any of Vendor's Agents to comply with all applicable rules and laws, rules or regulations (Indemnitee's or otherwise) governing security, maintenance, fitness for duty, health, safety and the environment at or about such premises; (ii) any claim against Indemnitees by or on behalf of any of Vendor's Agents for injury or otherwise; (iii) any claim against Indemnitees resulting from Vendor's failure to maintain worker's compensation or other public or private insurance with respect to any of Vendor's Agents; or (iv) the breach of performance of the Terms and Conditions of this Order. In the event that any claim, demand or lawsuit is made against Buyer relating to the Vendor Obligations or to Vendor's performance hereunder or to trade names, trademarks, copyrights or patents and/or are based upon unfair competition by reason of sale or use of Vendor's Vendor Obligations by Buyer, Vendor shall defend all actions against Buyer, pay all costs of any lawsuit, including attorney's fees, and indemnify and hold harmless Buyer for any costs incurred by Buyer in connection herewith. Vendors who manufacture, transport, install, modify or perform maintenance/repair Buyer's equipment shall maintain, at no additional cost to Buyer, coverages and amounts of insurance, naming Buyer as an additional insured, in accordance with the attached insurance requirement document. Vendor shall produce certificates of insurance upon Buyer's request. Failure of Vendor to procure and maintain the insurance required below will not modify, alter, minimize or negate the indemnity obligations set forth above.

**4. PRICE, TAXES, TRANSPORTATION.** Except as otherwise specified herein, the Total Commitment shall be F.O.B. Delivery at the place or address provided for on the first/face page of this Order; inclusive of all applicable taxes, excises, duties, quotation fees, insurance, permits, or any other governmental and provincial impositions on or related to the production, sale, performance, labor, or transportation of the Vendor Obligations; in compliance with any governmental price limitation; and subject to increase only with Buyer's prior written consent. The Total Commitment and invoices submitted hereunder shall not include any tax with respect to which Buyer has furnished an applicable exemption or resale certificate. If after the date of this Order and prior to the date of delivery any taxes charged to Buyer herein (whether separately itemized or included in the Vendor Obligations Prices are increased by governmental authority or Vendor is exempted in whole or in part from the burden of said taxes, the Total Commitment shall be correspondingly increased or reduced. Vendor shall assume all additional transportation costs (including insurance) caused by failure to comply with any Buyer provided routing instructions. Acceptance of Vendor Obligations shall be deemed complete when Buyer has inspected and accepted the Vendor Obligations, at which time risk of loss shall pass to Buyer. Unless otherwise provided for on the first/face page of this Order, invoices shall be payable no earlier than the last day of the month following the month of Buyer's acceptance of the Vendor Obligations provided Vendor invoices are received within five (5) days of Buyer's acceptance of the Vendor Obligations. Vendor shall not submit invoices to Buyer prior to delivery or Buyer's acceptance of the Vendor Obligations. Delivery charges and provincial tax shall be separately itemized. Buyer shall have no liability for charges except as set forth in this Order.

**5. INSPECTION/TESTING.** Vendor shall submit to Buyer all production, functional and quality control test reports, manufacturer drawings and other data as Buyer may request. Buyer shall have the right to inspect all Vendor Obligations prior to shipment in order to assess work quality and conformance with Buyer's specifications and Vendor's representations, warranties and covenants under this Purchase Order. Upon delivery, Buyer shall have the right, prior to acceptance, to inspect or test any Vendor Obligations in a timely manner. If such examiners conclude that any Vendor Obligations or part thereof was not constructed or performed per specification, scope of work, applicable governmental laws or regulations, Buyer standards, or in a manner to perform satisfactorily in its intended use, Vendor shall reimburse Buyer for the expense of such testing and at its sole cost to either modify, replace, or repair each affected Vendor Obligations or reimburse Buyer through separate payment or Vendor invoice set-off therefore. Vendor Obligations recalled for such purposes shall be recalled and returned to the location from which recalled at Vendor's sole cost.

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**6. ACCEPTANCE.** Buyer's acceptance of Vendor Obligations shall be subject to Buyer's and End User's inspection thereof and Buyer shall have the right to (a) reject or revoke acceptance of any Vendor Obligations not in strict conformity with the requirements hereof ("Rejected Vendor Obligations") without invalidating the acceptance of other Vendor Obligations or, in Buyer's sole discretion, (b) require the correction or replacement of nonconforming Vendor Obligations or (c) obtain a replacement of the Rejected Good from a third party and Vendor will be responsible for additional costs incurred by Buyer. Buyer's acceptance of Vendor Obligations shall be effective only if in writing from Buyer, and neither payment by Buyer prior to acceptance of any Vendor Obligations nor failure to inspect any Vendor Obligations prior to shipment shall be deemed an acceptance thereof. Regardless of any passage of risk of loss, Rejected Vendor Obligations shall be held at Vendor's sole risk and expense, including all transportation and handling costs, until corrected by Vendor to Buyer's satisfaction and delivered to Buyer or End User. At Buyer's option, Rejected Vendor Obligations shall be replaced with acceptable Vendor Obligations of equal or greater value. Any payment by Buyer for Rejected Vendor Obligations shall be refunded to Buyer immediately upon request therefore.

**7. SPECIFICATIONS.** Vendor acknowledges that if specifications were provided by Vendor, Buyer assumes no responsibility for the performance of the Vendor Obligations in normal use. Vendor has familiarized itself with the uses to which the Vendor Obligations might be used and Vendor shall be solely responsible for the means, manner, design, load capability and method of construction, installation or modification of the Vendor Obligations.

**8. FORCE MAJEURE.** Either Buyer or Vendor may suspend performance during the occurrence of an excusable delay, which shall mean and include any delay not occasioned by the fault or negligence of the delayed party and which results from the acts of God or public enemy, restrictions, prohibitions, priorities or allocations imposed by governmental or provincial authority, embargoes, floods, fires, typhoons, earthquakes, epidemics, unusually severe weather, delays of similar nature or governmental causes, act of terrorism, and strikes or labor disputes (of or involving the delayed party's employees only). Excusable delays do not include lockout, shortage of labor or lack of or inability to obtain raw materials, fuel or supplies or any other industrial disturbance. Nothing contained in this paragraph shall limit Buyer's rights hereunder in any way, except that, in the event of Vendor's excusable delay, Vendor (a) shall not be liable for Buyer's incidental or consequential damages resulting therefrom and (b) may be given an adjustment in time to supply Vendor Obligations or perform Work. Vendor will not be entitled to any adjustment in price.

**9. DEFAULT.** In addition to all other remedies set forth herein, Buyer shall have the right to cancel this Order at any time in whole or in part in the event (a) Vendor fails to ship, or deliver Vendor Obligations or perform Work in accordance with this Order or comply with the specifications, schedule, milestones, samples, attachments or instructions issued by Buyer in connection herewith, (b) Vendor fails to affirm in writing, within five (5) days following Buyer's request, Vendor's ability to deliver all Vendor Obligations or perform Work in accordance with this Order; (c) Buyer or any of Buyer's customers determine that the materials, workmanship or quality are defective or (d) if default by Vendor hereunder continues ten (10) days after Buyer's notice of default. In the event of such default, Buyer shall be entitled to all available remedies under law and in equity and Vendor shall be liable for all damages and costs of Buyer (including liquidated damages assessed against Buyer by End User and any other damages and costs incurred by the End User and/or Buyer) resulting from any such Vendor default. Buyer shall have an unrestricted right to terminate this Order if, at any time in the sole judgment of Buyer, Vendor's financial or other business condition, lack of responsiveness, schedule of work threatens Vendor's performance hereunder. Notwithstanding anything herein to the contrary, in the event that Vendor fails to deliver any Vendor Obligations within ten days of the Delivery Date, Buyer shall have the right without further notice to refuse to accept the overdue Vendor Obligations, purchase substitute Vendor Obligations on the open market and hold Vendor accountable for any loss incurred in connection therewith. Cancellation of all or any part of this Order shall not cancel or waive Buyer's rights hereunder.

**10. TERMINATION.** Buyer may terminate this Order at any time in whole or in part without cause, whereupon Vendor shall terminate work on the Vendor Obligations, cease placement of further orders, terminate sub-contracts outstanding hereunder, and take all necessary action to protect any of Buyer's property in Vendor's possession, all without any further liability of Buyer.. With respect to Vendor Obligations made specifically for Buyer that cannot be sold to other purchasers, upon termination by Buyer, Vendor shall promptly advise Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that Vendor can make thereof. Vendor shall comply with Buyer's instructions regarding disposition of such work and material. All claims by Vendor based on such termination must be asserted, in writing and in full, within thirty (30) days from the date of termination. If the parties, after negotiation, are unable to agree within Sixty (60) days after the termination date upon the amount of fair compensation payable to Vendor for performance under this Order prior to the termination date, Buyer shall pay Vendor: (a) the contract price for completed items and (b) the actual costs, including a fair profit, incurred by Vendor and properly allocable under generally accepted accounting practices to the portion of this Order on which work was commenced but not completed, less (c) the value of any items used or sold by Vendor and the reasonable value or cost of any defective, damaged or destroyed work or material, subject to Buyer's right to audit all elements of such costs. The payment of profit shall not exceed six percent (6%) of the actual costs incurred by Vendor in connection with the work performed hereunder and shall not include any profits anticipated by Vendor on the uncompleted portion of this Order. In no event shall total payments exceed the Total Commitment. Buyer shall have no obligation to pay any claim by Vendor hereunder which is not submitted to Buyer in writing within thirty (30) days following the termination date and Buyer's obligations under this Section shall not be applicable in the event of a termination for cause. The payment provided for in this clause shall constitute Buyer's only liability in the event this Order is terminated as provided herein.. With respect to Vendor Obligations normally carried in inventory by Vendor ("Inventory Vendor Obligations"), Buyer shall not have liability for any termination of this Order, in whole or in part, prior to actual shipment. Buyer's cancellation of Inventory Vendor Obligations liability within ten days following shipment shall be limited to returning said Vendor Obligations and reimbursing Vendor for direct costs of transportation.

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**11. WARRANTIES.** Vendor represents that it is aware of the intended use of the Vendor Obligations and acknowledges Buyer's reliance on Vendor's obligation to furnish Vendor Obligations suitable for such purposes. Vendor warrants (a) that the Vendor Obligations, including material, labor and work, furnished hereunder shall be of the highest grade and quality unless otherwise specified by Buyer in writing, shall not be less than merchantable and fit for the particular purposes known by or disclosed to Vendor as applicable thereto, shall meet specifications, building codes, drawings or standards agreed upon or samples submitted or approved by Buyer, and shall conform to the Additional Documents; (b) that all Vendor Obligations shall be in accordance with this Order, free from defects in labor, materials, handling or fabrication; (c) that the Vendor Obligations shall comply with all applicable laws, regulations, rules and orders, now existing or hereinafter enacted; and (d) that the Vendor Obligations shall not infringe any patent, copyright or trademark held by any other person or legal entity. Vendor agrees that such warranty will begin from the date of acceptance by Buyer or acceptance of the complete end product by End User, whichever is later. The warranties herein are in addition to those otherwise provided or implied by law or customarily given by Vendor with respect to materials, products, merchandise, services and work substantially similar to items covered by this Order but in no event shall such warranty be for less than one year. Payment by Buyer shall not constitute an acceptance of Vendor Obligations or a waiver of any rights of Buyer hereunder. In the event that any Vendor Obligations are not in compliance with this Purchase Order, Buyer may (without limitation of any other right) return the defective Vendor Obligations to Vendor who shall refund and return to Buyer its cost plus freight to Buyer's delivery location and freight for return to Vendor or, at Buyer's option, repair, correct or replace the defective Vendor Obligations at Vendor's cost and expense.

**12. TOOLING/MATERIALS ON CONSIGNMENT.** Except as otherwise provided herein, all tools, dies, fixtures, gauges, templates, equipment, materials and similar items used by Vendor in the manufacture of the Vendor Obligations shall be furnished by and at Vendor's sole expense. Materials furnished by Buyer or furnished by Vendor and paid for by Buyer ("Buyer's Materials") shall be deemed to be Buyer's sole property held by Vendor on consignment, but at Vendor's sole cost and risk, and Vendor agrees to pay Buyer for any Buyer's Materials not returned to Buyer upon the completion or earlier termination of this Order in the condition delivered to Buyer, reasonable wear and tear excepted. While in the possession of Vendor, all Buyer's Materials shall be maintained in condition satisfactory to Buyer and shall be clearly identified as Buyer's property. Buyer's Materials may be disposed of only upon Buyer's written instructions and shall not be used for any production except that authorized by Buyer. Buyer's Materials shall be insured by Vendor for the full value under both fire and extended coverage while in the possession, custody or control of Vendor and while in transit from Vendor to Buyer. Vendor shall treat as confidential all Buyer's Materials, drawings, specifications, Buyer's customer name, Destination and any other information furnished by Buyer and shall return all furnished documents to Buyer upon completion or earlier termination of this Order. Vendor agrees to sign, at Buyer's request, a Non-Disclosure Agreement applicable to the Vendor Obligations required herein.

**13. COMPLIANCE.** Vendor represents, warrants, certifies and covenants that: (a) it shall perform or supervise all activities required under this Purchase Order in compliance with all applicable federal, provincial, state and local environmental, health and safety laws, rules, acts, and regulations; (b) all of Vendor's employees are properly trained and competent in the activities necessary to satisfy 13(a) hereof; (c) no products supplied under this Purchase Order have been or will be produced utilizing forced, indentured or convict labor or in segregated facilities or utilizing the labor of persons in violation of the minimum working age law in the country of manufacture, or in violation of minimum wage, hour of service, or overtime laws, of the country of manufacture or in an environment that does not allow equal opportunity for hire, continued employment or advancement due to religion, color, ethnic background; and (f) if any Vendor Obligations or other materials sold or otherwise transferred to Buyer hereunder contain hazardous materials, Vendor shall provide all relevant information pursuant to all applicable federal, provincial, state, and local environmental, health and safety laws, rules, guidelines, acts, clauses and regulations Vendor Obligations and other materials sold or otherwise transferred to Buyer hereunder shall not contain arsenic, asbestos, benzene, carbon tetrachloride, lead, cadmium, or chemicals restricted under the Montreal Protocol unless Buyer expressly agrees otherwise in writing. From time to time, at Buyer's request, Vendor shall provide certificates to Buyer relating to any applicable legal requirements or to update this Section, in each case in form and substance satisfactory to Buyer.

**14. ASSIGNMENT & WAIVER.** Vendor shall not assign or sub-contract any substantial part of this Order without Buyer's prior written permission. The failure of Buyer to insist at any time upon the strict performance of any of the terms, covenants or conditions of this Order or to exercise any right or remedy herein, or the waiver by Buyer of any breach of any of the terms, covenants or conditions of this Order shall not be construed as thereafter waiving any such terms, covenants, conditions, rights or remedies.

**15. NOTICES.** Any notice, request or demand given under this Order, whether or not required, shall be valid only if in writing and shall be deemed effective three (3) days following deposit in a Postal Service Office if mailed by certified mail, return receipt requested, postage prepaid, to Buyer to the attention of the Sourcing Department, ModSpace Financial Services Canada, LTD2300 North Park Drive, Brampton, ON L6S 6C6 and to Vendor at the address set forth above. If given in any other manner, notice hereunder shall be effective upon receipt.

**16. MISCELLANEOUS.** This Order, together with all amendments, schedules, flowdowns, and addenda, constitutes the entire agreement between the parties hereto and supersedes all prior agreements and understandings of the parties, but without prejudice to Buyer's rights with respect to any breach or default by Vendor under any such prior agreements, and shall be binding upon each party and its respective representatives, successors, and assigns. In the event that any provision hereof is in violation of or prohibited by any law, statute or ordinance, such provision shall be deemed amended to conform to such law, statute or ordinance without invalidating any provisions of this Order. Vendor's indemnification obligations under this Order shall survive the termination of this Order. Vendor shall be responsible for its compliance with this Order to the same degree, extent and under the same conditions that Buyer is responsible to Owner under its contract with End User for the Vendor Obligations contracted herein. In the event of conflict or ambiguity between any provision of this Order and any provisions of the prime contract, the more stringent interpretation or requirement shall prevail. This Order and the parties' rights and obligations hereunder shall be governed by, and construed in accordance with, the internal laws of the Province of Ontario and the federal laws of Canada applicable therein, including all matters of construction, validity and performance, regardless of the location of the F.O.B. Delivery site. Vendor hereby submits to jurisdiction and venue of courts having situs in the Province of Ontario. Section headings are for convenience only and shall not affect the construction or interpretation of this Order.