

# modaLIGHT®

## STANDARD TERMS AND CONDITIONS 2019 V.1

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MODA LLC ("MODA LIGHT") hereby gives notice of its exception to any revised or additional terms and conditions other than as stated herein and these Terms and Conditions supersede all those published and issued previously by MODA.

All products ordered by any customer ("Buyer") from MODA LIGHT or appointed Sales Agencies constitutes acceptance of the terms set forth herein, as such terms may be updated or revised. The Buyer's acceptance of the Terms and Conditions recited herein shall be conclusively presumed on Buyer's receipt of the goods. These Terms and Conditions constitute the entire agreement between MODA and the Buyer, and supersede other communications between the two parties, whether written or oral.

### **ACCEPTANCE OF ORDERS**

All orders are subject to acceptance by MODA LIGHT and are subject to these Terms and Conditions. MODA LIGHT reserves the right to select its customers and reject any order. Additions to orders are allowed in circumstances where the original order has not yet been released to manufacturing. Any other terms and conditions proposed by Buyer and/or stated in a Buyer's purchase order are not valid unless approved and accepted in writing by an authorized MODA LIGHT representative. Acceptance of any order is subject to product availability and the ability of MODA LIGHT to deliver. Buyers placing orders for MODA LIGHT products who are located in a geographic area covered by an MODA LIGHT sales agent will be directed to the nearest appointed MODA LIGHT sales agent in their area. In cases where the Buyer is located in a geographic area not covered by an MODA LIGHT sales agent, then Buyer may make inquiries and place orders directly with MODA LIGHT.

### **PRICING**

Please refer to the current price lists. All prices stated in MODA LIGHT's price lists are in US dollars and subject to change without notice. Price quotes for special projects and large quantity purchases may, upon inquiry, be provided by MODA LIGHT at MODA LIGHT's sole and absolute discretion. MODA LIGHT must confirm all quotations in documentation for the period shown on the quotation. Price preservation will be provided for a period of thirty (30) days from date of quotation from MODA LIGHT.

### **SALES AND SIMILAR TAXES**

MODA LIGHT's prices do not include Federal, State or Municipal sales, use, excise, or similar taxes. Consequently, in addition to the price specified herein, the amount of any present or future sales, use, excise, or other similar tax applicable to the sale or use of the products purchased from MODA LIGHT shall be paid by the Buyer, or in lieu thereof, the Buyer shall provide MODA LIGHT with a tax exemption certificate from the relevant taxing authorities in Buyer's jurisdiction.

### **TERMS OF PAYMENT**

Terms of payment for MODA shall be NET 30 days upon credit account application approval. Buyers purchasing without credit accounts are responsible for 100% payment due before order is processed. MODA LIGHT will accept payment in USD funds by check, cash, credit card, ACH, or wire transfers. For International orders outside of Canada, payment must be made by wire transfer.

All non-account customers, with orders in excess of \$20,000 USD require a down payment of 50% of total cost due at placement and acceptance of order with the remaining 50% due before shipping. A service charge of 1.5% per month will be charged on all past due invoices. This is an annual percentage rate of 18%. The service charge shall be paid in full and due one month from the original Buyer balance payment due date. The service charge will continue to be added to and included as part of any past due balance monthly until payment is received. Should it become necessary for MODA LIGHT to institute formal collection or other legal proceedings to collect any past due amounts from the Buyer; MODA LIGHT shall be entitled to recover all collection and legal fees and other costs (including attorney's fees and court costs) associated with such proceedings in addition to the actual past due amount. Notwithstanding the acceptance of any order by MODA LIGHT, MODA LIGHT reserves the right not to ship material to any Buyer who does not pay in accordance with the applicable term of payment or who in the sole opinion of MODA LIGHT may be unable to meet its payment obligations to MODA LIGHT.

### **MINIMUM ORDER FEE**

Orders received with a total net price (excluding taxes or shipping charges) of less than \$750 USD will be subject to a handling charge of \$75 USD. This fee may be waived for orders that are add-ons to existing projects with confirmation of original sales order number.

### **INVOICING**

All invoices are due and payable in compliance with these Terms and Conditions. In the case of an apparent discrepancy in a line item charge on an invoice received by Buyer, Buyer shall notify a MODA LIGHT customer service representative in writing of the nature of the claimed discrepancy within ten (10) calendar days of receipt of the invoice. A claim of discrepancy does not excuse Buyer of the absolute obligation to pay the remaining balance of the invoice in accordance with the standard terms of payment. Any claim of discrepancy about which MODA LIGHT has been timely notified will be reviewed by MODA LIGHT and the discrepancy will be resolved in MODA LIGHT's sole and absolute discretion. MODA LIGHT will promptly inform Buyer of its decision regarding any disputed items or charges made in a claim of discrepancy and Buyer expressly agrees to abide by MODA LIGHT's decision relative to such claim of discrepancy.

### **SHIPPING**

At the time of a product order, MODA LIGHT will provide an estimated delivery date. However, MODA LIGHT will not be responsible for any costs incurred by Buyer if products ordered arrive later than the estimated delivery date. MODA LIGHT will not be liable for any delay or non-delivery in shipping for any reason, but not limited to delay or non-delivery caused directly or indirectly by Acts of God, fire, flood, strike or lockout or other labor dispute, accident, civil commotion, riot, war, governmental regulation or order, whether or not it later proves to be invalid, or from any other cause or causes beyond MODA LIGHT's control. IN NO CASE WILL MODA BE LIABLE FOR LOSS OF PROFITS OR ANY INDIRECT, SPECIAL, INCIDENTAL, MULTIPLE, PUNITIVE OR CONSEQUENTIAL DAMAGES ON ACCOUNT OF ANY DELAY IN DELIVERY OR NONDELIVERY WHETHER OR NOT EXCUSED HEREUNDER.

All express orders must be specifically designated "RED." If requested RED items are in stock, items will be shipped within 24 hours from the time the order is received by MODA LIGHT. All other Terms and Conditions remain applicable. MODA provides no guarantee of shipment for RED packages. If any requested item is not available in stock, it will not be available for RED delivery. Buyer requests for shipping deferment must be approved by MODA LIGHT and are subject to price negotiation.

## **FREIGHT ALLOWANCE AND F.O.B. POINT**

All sales are F.O.B. shipping point (Las Vegas, Nevada). Risk of loss and title of goods shall pass to Buyer upon delivery to the designated carrier. Freight is allowed on all shipments of products with a net order value of \$5,200 USD and above to destinations within the contiguous United States. For shipments to Canada, freight will be prepaid with a net order of \$8,000 USD or above. All orders shipped on MODA LIGHT's freight account will be charged a minimum \$35.00 USD shipping and handling fee. Contact MODA LIGHT customer service for applicable terms and conditions outside the contiguous United States.

MODA LIGHT reserves the right to select carrier and route-qualified freight allowed shipments via least expensive surface routes within the contiguous United States. Buyer will assume all charges for transportation specified via more expensive means. Acceptance of a specified routing does not constitute a guarantee of ship date, transit time or arrival date. MODA LIGHT reserves the right to ship all orders in one complete shipment.

Partial shipments may be made at MODA LIGHT's sole discretion. MODA LIGHT will not be responsible for any cartage or storage charges at destination. Claims for loss or damage must be reported directly to the carrier. MODA LIGHT's willingness to assist with any claims for loss or damage does not indicate and shall not be construed as an indication of any liability or responsibility on the part of MODA LIGHT for such claim or replacement.

## **EXPORT REGULATIONS/PERMITS**

Buyer will comply with the provisions of the United States Government's Export Administration regulations and related documentation requirements and internal control procedures. Buyer shall be responsible for obtaining any necessary export or import licenses and permits.

## **BACK ORDERS/HOLD ORDERS**

Back orders will be shipped F.O.B. factory or point of shipment with freight prepaid and shipped via the most cost-effective method, but only where the original order was qualified for freight allowance. Orders of more than \$5,000 USD will be accepted on a "Hold for Release" basis only if the time periods specified on a written quotation are adhered to. Production and procurement of components will be withheld until a firm release date is given. Hold for release orders without a specified time period on a quotation will be canceled after one year from date of the order. Any order containing separate releases specified by the Buyer will each be treated as individual orders and subject to freight allowance and minimum billing.

## **CANCELLATIONS**

In the event of cancellation of a stock product, Buyer may cancel orders with written notice to MODA LIGHT and with MODA LIGHT's written consent, subject to the following conditions. MODA LIGHT will always try to accommodate requests for cancellations but cannot guarantee stoppage of shipment for stock products. If an order for a stock product is stopped after shipping arrangements have been made, Buyer shall pay any costs associated with such order. If a cancellation request is received and the order cannot be stopped, the product can be returned according to terms as stated in the Returned Goods Policy section herein. There is no allowance for cancellation on RED orders after acceptance of order by MODA LIGHT.

In the event of a cancellation of a non-stock product, MODA LIGHT's written consent will be given only if no work has been performed and no materials purchased. Proof of production progress is not a guarantee. If work has been performed, any costs incurred will be charged to the customer, which may include a cancellation charge up to the price of the product. Upon cancellation, Buyer owned materials are not guaranteed to be returned.

## **RETURNED GOODS POLICY**

All returned merchandise is subject to MODA LIGHT's approval and must comply with MODA LIGHT's official return policy. Except for defective products (which fall under MODA LIGHT's Limited Warranty), requests for permission to return merchandise must be made within thirty (30) calendar days after order shipment. The Return Merchandise Authorization (RMA) form must accompany returned products, reflecting MODA LIGHT's permission to return goods received. All returned goods must be in excellent, resalable condition and packaged in the original packaging. Items returned for refund will be shipped at Buyer's expense. Incoming return packages must have the authorized RMA number clearly stated on the outside of the packaging and must include all pertaining paperwork.

Products will be inspected upon receipt by MODA LIGHT for full compliance with the conditions set forth herein and must be approved by MODA before any further return processing will take place. If returned products are not in resalable condition, all products will be returned to Buyer at Buyer's expense without any credits issued. If some, but not all, of the returned products are not in resalable condition, then MODA LIGHT will issue a partial credit for those returned products which are in resalable condition and the remaining returned products will be returned to Buyer at Buyer's expense without any credits issued. Within 30 calendar days of the date MODA LIGHT notifies Buyer that the returned products will not be accepted for return, Buyer shall provide MODA LIGHT with a UPS or FedEx account number in Buyer's name, which shall be used by MODA for sending back any unapproved returned merchandise. MODA LIGHT will keep unapproved returned merchandise for 30 calendar days from the date MODA LIGHT notifies Buyer that the returned products will not be accepted for return; thereafter, such unapproved returned merchandise will be disposed of without any credits to Buyer whatsoever.

A 35% minimum restocking charge on stock products will be deducted from all credits issued on authorized stock product returns. Credits will be issued for only the actual quantity of merchandise received and accepted for return by MODA LIGHT and will be based on the original actual invoice price charged to Buyer. A Return Manufacture Authorization (RMA) form, supplied by MODA LIGHT, must accompany the return shipment. Return merchandise must be received by MODA LIGHT within thirty (30) calendar days of issuance of the RMA and must be a non-discontinued product. MODA LIGHT reserves the right to deduct for any damage sustained in transit. Unauthorized returns will be refused. All non-stock, special or custom-made products or discontinued items are not returnable whatsoever. If the returned merchandise is a result of the fault of MODA LIGHT and permission is granted for its return, MODA LIGHT will give a full credit refund of the original invoice price and freight.

## **APPLICATION/INSTALLATION**

Professional installation is required of MODA LIGHT products. MODA does not warrant the accuracy of any application of a product other than its stated applications nor will MODA LIGHT be responsible for the costs of system performance recommendations provided from any engineering opinion other than MODA LIGHT. Responsibility for selection of the proper product or application rests solely with the Buyer. Products should be installed, used, and maintained in accordance with the applicable MODA LIGHT instructions, National Electrical code and/or any prevailing local codes. No modifications to a MODA LIGHT product can be made. Any modification will void any U.L. ETL or CE listings and MODA LIGHT warranty.

## **PRODUCT SPECIFICATION**

MODA LIGHT reserves the right to modify designs, change specifications, change prices, and discontinue products at any time without notice. The product information set forth in any MODA LIGHT catalog pages is for reference purposes only. Specifications, dimensions and performance may change without notice or change in accordance with customized application.

## **INDEMNIFICATION**

Buyer agrees to indemnify, defend, and hold MODA LIGHT harmless, at its own expense, against any action, claim, suit, liability, damage, expense, or cost (including costs and reasonable attorney's fees and expenses) brought or threatened to be brought against MODA LIGHT by a third party by reason of, arising out of, or relating to any damage to property, any injury or death to persons occasioned by or in connection with any actions or omissions of the Buyer or its employees or any negligence or misconduct of Buyer or any personnel employed or otherwise engaged by Buyer to act on behalf of the Buyer. Buyer's indemnification obligations under this section shall arise immediately upon receiving notice from MODA LIGHT of any claim for which Buyer is obligated to indemnify MODA LIGHT and shall arise regardless of the ultimate validity of any third-party claim. To the extent MODA LIGHT incurs any expenses (including costs, attorney's fees, and expenses) in connection with any third-party claim, such expenses shall be payable by Buyer on an immediate and ongoing basis as such expenses are incurred. Buyer shall, at the request of MODA LIGHT, assume the defense of any demand, claim, action, suit or proceeding brought against MODA LIGHT by reason thereof and pay any and all damages assessed against or that are payable by MODA LIGHT as the result of the disposition of any such demand, claim, action, suit or proceeding.

MODA LIGHT agrees to indemnify, defend, and hold the Buyer harmless, at its own expense, against any action, claim, suit, liability, damage, expense, or cost (including costs and reasonable attorney's fees and expenses) brought or threatened to be brought against the Buyer by reason of, arising out of, or relating to any third party claims which have been determined by a court of competent jurisdiction and upheld on appeal that any products purchased by Buyer infringe upon a patent of such third party. Buyer must inform MODA LIGHT within ten (10) business days of any pending or threatened legal action or claim which Buyer believes triggers MODA LIGHT's indemnification obligations and Buyer's failure to timely inform MODA LIGHT will nullify MODA LIGHT's indemnification obligations. In the event indemnification is required by MODA LIGHT, Buyer shall (a) reasonably cooperate with MODA LIGHT at MODA LIGHT's reasonable expense to pursue the defense of any claims and the negotiation of any settlement thereof; and (b) shall grant exclusive control of such defense and all settlement negotiations to MODA LIGHT; and (c) Buyer may participate in such defense (including hiring of its own counsel) but at its own cost and expense (which such costs and expense shall not be subject to indemnification on the part of MODA LIGHT).

## **LIMITED WARRANTY AND LIMITATION OF LIABILITY MATERIAL**

The Limited Product Warranty set forth in Exhibit 1 ("Product Warranty") shall be the sole warranty applicable to products purchased by Buyer. The contents of the Product Warranty are subject to change at the sole discretion of MODA LIGHT. Any claim by Buyer for breach of the foregoing warranty shall be deemed waived by Buyer unless submitted to MODA LIGHT in writing within thirty (30) calendar days from the date Buyer discovered, or by reasonable inspection should have discovered, the alleged breach. Any cause of action for breach of the foregoing warranty shall be brought within one year after the cause of action has occurred. Any charges for labor, materials, etc. that does not have our written approval before such work is implemented will not be allowed. Contact MODA LIGHT Customer Services for support.

## **LIMITATION OF LIABILITY**

IN NO EVENT, WHETHER AS A RESULT OF A BREACH OF CONTRACT, TORT, STRICT LIABILITY, WARRANTY OR ALLEGED NEGLIGENCE, SHALL MODA BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, MULTIPLE, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, LOSS OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF THIRD PARTIES OF THE BUYER FOR SUCH DAMAGES. IN NO EVENT SHALL MODA'S TOTAL LIABILITY FOR ANY REASON ARISING HEREUNDER EXCEED THE PURCHASE PRICE PAID TO MODA FOR THE PRODUCT PURCHASED BY THE BUYER HEREUNDER.

## **MISCELLANEOUS**

These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Nevada without regard to conflict of law's provisions. Any dispute arising out of or relating to the Terms and Conditions will be subject to the exclusive jurisdiction of the federal or state courts located in Las Vegas, Nevada. Buyer and MODA LIGHT, on behalf of itself and its members, shareholders, managers, directors, officers, employees, agents and affiliates, personally, irrevocably consent to the personal jurisdiction of such courts. The prevailing party in any lawsuit arising out of or relating to these Terms and Conditions will be entitled to recover all reasonable costs incurred in the lawsuit, including its reasonable attorney fees.

The failure of MODA LIGHT to require performance of any provision of these Terms and Conditions will not affect its rights to require full performance thereof at any time thereafter, and a waiver by MODA LIGHT of any non-compliance of any such provision of these Terms and Conditions shall not be taken to be a waiver of any subsequent or similar non-compliance or as nullifying the effectiveness of such provision. In no event will MODA LIGHT be liable to Buyer for any incidental, consequential or speculative damages.

Any provision of these Terms and Conditions, which is prohibited or found unenforceable in any jurisdiction, shall, as to such jurisdiction be, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

# modaLIGHT®

## Exhibit 1 Limited Product Warranty

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The following Limited Warranty shall govern on all orders for Products by Agent and sales of Products to Agent by Manufacturer (MODA LLC, 955 White Drive, Las Vegas, Nevada 89119). The terms herein may be updated by manufacturer from time to time. Ordering Products from Manufacturer constitutes acceptance of the terms set forth herein, as such terms may be modified and updated. Any different, conflicting or additional terms in any purchase order or other writing from Agent or in order acknowledgement or other writing from Manufacturer shall be of no force or effect unless acknowledge and executed by an officer of Manufacturer and a written confirmation from the Manufacturer is supplied in each instance.

Manufacturer's warranty obligations for Products are limited to the terms set forth below: Manufacturer warrants Products against defects in materials and workmanship for a period of one (1) to five (5) years from the date of original purchase (the "Warranty Period"). This may vary from product to product. If a defect arises and Manufacturer receives a valid claim within the Warranty Period, shipping and handling charges will apply to any repair or exchange of the product undertaken by Manufacturer. All Warranty work must be done at Manufacturer's factory and will not be dealt with in the field. Manufacturer warrants replacements or repairs for thirty (30) days or for the remaining portion of the Warranty Period, whichever is longer. When a product or part is exchanged, any replacement item becomes your property and the replaced item becomes Manufacturer's property.

### **Exclusions and Limitations**

This Limited Warranty applies only to the Products manufactured by or for Manufacturer that can be identified by Manufacturer's trade name or logo affixed to it. This Limited Warranty does not apply to any non-Manufacturer hardware product or any software, even if packaged or sold with the Products. In addition, this Limited Warranty for Manufacturer's Products is void if the Products are used in conjunction with non-Manufacturer hardware products or products that are not covered under Manufacturer's Intertek ETL listing. Non-Manufacturer manufactures, suppliers, or publishers may provide a separate warranty for their own products packaged with Products.

Software distributed by Manufacturer under the Manufacturer's brand name is not covered under this Limited Warranty. Manufacturer is not liable for any damage to or loss of any programs, data, or other information stored on any media contained within the Products or any non-Manufacturer products or part not covered by this Limited Warranty. Recovery or reinstallation of data or other show information is not covered under this Limited Warranty unless data or other show information was written by Manufacturer. Manufacturer is not liable for any charges related to installation or the removal of Products.

This Limited Warranty does not cover damage caused by any form of misuse or improper installation procedures including (but not limited too): improper wiring, improper electrical connections or voltages, or any other use not in accordance with user guides/manuals or specifications of the product. This Limited Warranty does not apply: (a) to damage caused by accident, abuse, misuse, misapplication, or non-Manufacturer products; (b) to damage cause by service performed by anyone without the written permission of Manufacturer; (d) to damage caused by accidents, misuse or errors in installation; or (e) if any Manufacturer serial number has been removed or defaced from the Product.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY AND THE REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL THEIR WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED. MANUFACTURER SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IF MANUFACTURER CANNOT LAWFULLY DISCLAIM OR EXCLUDE IMPLIED WARRANTIES, THEN SUCH IMPLIED WARRANTIES SHALL EXPIRE ON EXPIRATION OF THE WARRANTY PERIOD. No Manufacturer reseller, agent, or employee is authorized to make any modifications extensions, or addition to this Limited Warranty.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, MANUFACTURER IS NOT RESPONSIBLE FOR DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OR CONDITION, OR UNDER ANY OTHER LEGAL THEORY, INCLUDING ANY COSTS OF RECOVERING OR REPRODUCING ANY PROGRAM OR DATA STORED IN OR USED WITH THE PRODUCTS, AND ANY FAILURE TO MAINTAIN THE CONFIDENTIALITY OF DATA STORED ON THE PRODUCT. MANUFACTURER SPECIFICALLY DOES NOT REPRESENT THAT IT WILL BE ABLE TO REPAIR ANY PRODUCT UNDER THIS WARRANTY OR MAKE A PRODUCT EXCHANGE WITHOUT RISK TO OR LOSS OF PROGRAMS OR DATA. FOR CONSUMERS WHO HAVE THE BENEFIT OF CONSUMER PROTECTION LAWS OR REGULATIONS IN THEIR COUNTRY OF PURCHASE OR, IF DIFFERENT, THEIR COUNTRY OF RESIDENCE, THE BENEFITS CONFERRED BY THIS WARRANTY ARE IN ADDITION TO ALL RIGHT AND REMEDIES CONVEYED BY SUCH CONSUMER PROTECTION LAW AND REGULATIONS. TO THE EXTENT THAT LIABILITY UNDER SUCH CONSUMER PROTECTION LAW AND REGULATIONS MAY BE LIMITED, MANUFACTURER'S LIABILITY IS LIMITED, AT ITS SOLE OPTION, TO REPLACEMENT OR REPAIR OF THE PRODUCT OR SUPPLY OF THE REPAIR SERVICE AGAIN.

### **Obtaining Warranty Service**

Please contact Manufacturer's help resources at 702-407-7775 before seeking warranty service. If the Product is still not functioning properly after making use of these resources, contact a Manufacturer representative at 702-407-7775 for instructions on how to obtain warranty service.

Note: Before delivery a Product for warranty service, it is your responsibility to backup all data including all software programs. You will be responsible for reinstalling all data. Data recovery is not included in the warranty service and Manufacturer is not responsible for data that may be lost or damaged during transit or a repair.