

STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS

These Terms and Conditions are the standard terms for the sale of goods by Moda Ceramics Limited registered in Scotland under number SC668314, whose registered address is Unit 6, Merlin Way, Hillend, Dunfermline KY11 9JY

1. Definitions and Interpretation

In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Business Day"	means, any day other than a Saturday, Sunday or bank holiday;
"Calendar Day"	means any day of the year;
"Contract"	means the contract for the purchase and sale of Goods, as explained in Clause 2;
"Goods"	means the goods which are to be supplied by Us to you as specified in your Order (and confirmed in Our Order Confirmation);
"Price"	means the price payable for the Goods;
"Order"	means your order for the Goods as shown overleaf;
"Order Confirmation"	means Our acceptance and confirmation of your Order as described in Clause 2;
"We/Us/Our"	means Moda Ceramics Limited registered in Scotland under number SC668314 whose registered address is Unit 6, Merlin Way, Hillend, Dunfermline KY11 9JY.

Each reference in these Terms and Conditions to "writing" and any similar expression includes electronic communications sent by e-mail.

2. The Contract

These Terms and Conditions govern the sale of goods by Us and will form the basis of the Contract between Us and you. Before making your Order, please ensure that you have read these Terms and Conditions carefully. If you are unsure about any part of these Terms and Conditions, please ask Us for clarification.

Nothing provided by Us including, but not limited to, sales and marketing literature, price lists and other documents constitutes a contractual offer capable of acceptance. Your Order constitutes a contractual offer that We may, at Our discretion, accept.

A legally binding contract between Us and you will be created upon Our acceptance of your Order, indicated by Our Order Confirmation. Order Confirmations will be provided in writing. By making an Order, you are consenting to a credit check which may be carried out by Us.

We shall ensure that the following information is given or made available to you prior to the formation of the Contract between Us and you, save for where such information is already apparent from the context of the transaction:

2.1	The main characteristics of the Goods;
2.2	Contact details (set out below in Clause 11);
2.3	The total Price for the Goods including taxes;
2.4	Where applicable, all additional delivery charges or, where such charges cannot be calculated in advance, the manner in which they will be calculated;
2.5	Where applicable, the arrangements for payment, delivery or collection and the estimated for the delivery or arrival of the Goods;
2.6	Our complaints handling policy (set out in clause 11); and
2.7	We shall ensure that you are aware of Our legal duty to supply goods that are in conformity with the Contract.

3. Description and Specification of Goods

We have made every reasonable effort to ensure that the Goods conform to illustrations, photographs and descriptions provided in Our sales and marketing literature. We cannot, however, guarantee that all descriptions, illustrations and/or photographs will be accurate.

If you receive any Goods that do not conform to the Contract, please refer to Clause 7.

We reserve the right to make any changes in the specification of the Goods that may be required to conform to any applicable safety or other legal or regulatory requirements without notice.

4. Orders

All Orders for Goods made by you will be subject to these Terms and Conditions. We may cancel your Order at any time before We despatch the Goods in the following circumstances:

4.1	The Goods are no longer in stock and We are unable to re-stock (if, for example, the Goods are discontinued); or
4.2	An event outside of Our control continues for more than 14 Business Days (please see Clause 10 for events outside of Our control).

You are responsible for ordering the exact quantities of the Goods that you require.

5. Price and Payment

The Price of the Goods will be that shown in Our quote at the time of your Order. If the Price shown in your Order differs from the Price shown on our receipt of your Order, we will apply the lower Price. We have made every reasonable effort to ensure that Our Prices, as shown in Our current quote are correct. Our Prices can be affected by market fluctuations or re-stocking charges. Prices will be checked when we process your Order. If the actual Price of the Goods is higher than that stated in your Order, We will ask you how you wish to proceed.

All Prices exclude VAT. If the rate of VAT changes between the date of your Order and the date of your payment, We will adjust the rate of VAT that you must pay. Additional delivery charges may be payable by you in the event that Our suppliers charge us for small orders or express delivery which relates to your Order.

All payments for Goods must be made within 30 Business Days of the date of delivery. We may in our sole discretion require you to pay for the Goods in advance before We can despatch the Goods to you or make them available to you for collection.

If you do not make payment to Us by the due date as shown on the order confirmation. We may charge you interest on the overdue sum at the rate of 2% per annum above the base lending rate of The Royal Bank of Scotland plc from time to time. Interest will accrue on a daily basis from the due date for payment until the actual date of payment of the overdue sum, whether before or after judgment. You must pay any interest due when paying an overdue sum.

6. Delivery

When We provide you with an Order Confirmation, We will provide an estimated delivery date. Please note that estimated delivery dates may vary according to the availability of Goods, your location, and circumstances beyond Our control or your failure to provide Us with adequate delivery instructions or other instructions relevant to the supply of the Goods. Time of delivery is not of the essence.

If you indicate in your Order that you wish to collect the Goods from Us yourself or by your nominee(s) from our premises at Unit 6, Merlin Way, Hillend, Dunfermline KY11 9JY ("Our Premises") you may do so after receiving notice from Us that the Goods are ready for collection. They can be collected during Our business hours of 9am to 5pm Monday to Friday.

Delivery will be deemed to have taken place when the Goods have been delivered to the delivery address indicated in your Order, unloaded and you (or someone identified by you) have taken physical possession of the Goods. The responsibility (sometimes referred to as the "risk") for the Goods remains with Us until delivery is complete at which point it will pass to you. Please note, however, that if you do not wish to collect the Goods and do not wish to use Our nominated carrier to deliver them, instead choosing your own carrier, the risk in the Goods will pass to you as soon as your chosen carrier has arrived at our Premises and prior to your chosen carrier loading the Goods to your vehicle.

If you are collecting the Goods from Us yourself, delivery will be deemed to have taken place when you or your nominee(s) have arrived to collect the Goods from Our Premises. The risk passes to You when you arrive at Our Premises to collect the Goods and prior to loading the Goods into your vehicle which shall be your responsibility.

If for any reason We are unable to deliver the Goods at your chosen delivery address, We will leave a note informing you that the Goods have been returned to Our Premises, requesting that you contact Us to arrange re-delivery.

If you fail to accept delivery of the Goods or collect the Goods, as the case maybe, within three Business Days of Us notifying you that the Goods are ready, then, we will make contact with you to discuss delivery and storage and any further costs associated with that. If ten Business Days after the day on which We notified you that the Goods were ready for delivery you have not taken or accepted or collected them, then We may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge you for any shortfall below the price of the Goods.

We may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

Until title to the Goods has passed to you, you shall: store the Goods separately from all other goods held by you so that they remain readily identifiable as the Our property;

6.1	not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
6.2	maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
6.3	notify us immediately if it becomes subject to any of the events listed in clause 9.1.1 to clause 9.1.4; and
6.4	give Us such information as We may reasonably require from time to time relating to: the Goods; and your ongoing financial position.
6.5	At any time before title to the Goods passes to you, we may:

6.8.9 by notice in writing, terminate your right to resell the Goods or use them in the ordinary course of your business; and

6.8.10 require you to deliver up all Goods in your possession that have not been resold, or irrevocably incorporated into another product and if you fail to do so promptly, enter any of your premises or of any third party where the Goods are stored in order to recover them.

You own the Goods once We have received payment in full for them.

7. Faulty, Damaged or Incorrect Goods

By law, We must provide goods that are of satisfactory quality, fit for purpose, as described at the time of purchase, in accordance with any pre-contract information We have provided. If any Goods you have purchased do not comply and, for example, have faults or are damaged when you receive them, or if you receive incorrect Goods, please contact Us as soon as possible and in any event within 7 Business Days of delivery or collection of the Goods to inform Us of the fault, damage or error, and to arrange for a refund, repair or replacement.

If you have purchased the Goods for an unsuitable purpose and a problem has resulted from your use of the Goods for that purpose; or if the problem is the result of normal wear and tear, misuse or intentional or careless damage you may not return Goods to Us. You may not return the Goods to Us merely because you have changed your mind.

To return Goods to Us for any reason under this Clause 7, you may do so in person to Our Premises during Our business hours of 9am to 5pm Monday to Friday or you may return them to Us by another suitable delivery choice. You may alternatively request that We collect the Goods from you. Please ensure that the Goods are ready for collection at the agreed time and location. We are solely responsible for collecting the Goods in this case, however We may appoint a third party carrier to collect them in which case We will provide you with all relevant details. We will be fully responsible for the costs of returning Goods under this Clause 7 and will reimburse you where appropriate.

Refunds (whether full or partial, including reductions in price) under this Clause 7 will be issued within 30 Calendar Days of the day on which We agree that you are entitled to the refund.

Any and all refunds issued under this Clause 7 will include all delivery costs paid by you when the Goods were originally purchased.

For full details of your rights and remedies as a consumer, please contact your local Citizens Advice Bureau or Trading Standards Office.

The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

8. Our Liability

We make no warranty or representation that the Goods are fit for commercial, business or industrial use of any kind (including resale). The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

8.2.1	death or personal injury caused by negligence;
8.2.2	fraud or fraudulent misrepresentation;
8.2.3	breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
8.2.4	defective products under the Consumer Protection Act 1987.
8.3	Subject to clause 8.2, Our total liability to you shall not exceed the Price paid for the Goods by you.
8.4	Nothing in these Terms and Conditions seeks to exclude or limit Your legal rights as a consumer. For more details of Your legal rights, please refer to Your local Citizens Advice Bureau or Trading Standards Office.
8.5	We will not be liable to you for any:
8.5.1	loss of profits;
8.5.2	loss of sales or business;
8.5.3	loss of agreements or contracts;
8.5.4	loss of anticipated savings;
8.5.5	loss of or damage to goodwill; and
8.5.6	indirect or consequential loss.

This clause 8 shall survive termination of the Contract.

9. Termination

Without limiting our other rights or remedies, we may terminate this Contract with immediate effect by giving written notice to you if:

9.1.1	You commit a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 3 Business Days of you being notified in writing to do so;
9.1.2	where you take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
9.1.3	you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or
9.1.4	your financial position deteriorates so far as to reasonably justify the opinion that your ability to give effect to the terms of the Contract is in jeopardy.
9.2	Without limiting Our other rights or remedies, We may suspend provision of the Goods under the Contract or any other contract between us if you becomes subject to any of the events listed in clause 9.1 or if We reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under this Contract on the due date for payment.
9.3	Without limiting Our other rights or remedies, We may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under the Contract on the due date for payment.
9.4	On termination of the Contract for any reason you shall immediately pay to Us all of the outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, We shall submit an invoice, which shall be payable by you immediately on receipt.
9.5	Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10. Events Outside of Our Control (Force Majeure)

We will not be liable for any failure or delay in performing Our obligations where that failure or delay results from any cause that is beyond Our reasonable control. Such causes include, but are not limited to: power failure, internet service provider failure, strikes, lock-outs or other industrial action by third parties, riots and other civil unrest, fire, explosion, flood, storms, earthquakes, subsidence, acts of terrorism (threatened or actual), acts of war (declared, undeclared, threatened, actual or preparations for war), epidemic or other natural disaster, or any other event that is beyond Our reasonable control.

If any event described under this Clause 10 occurs that is likely to adversely affect Our performance of any of Our obligations under these Terms and Conditions:

10.2.1	We will inform you as soon as is reasonably possible;
10.2.2	Our obligations under these Terms and Conditions will be suspended and any time limits that We are bound by will be extended accordingly;
10.2.3	We will inform you when the event outside of Our control is over and provide details of any new dates, times or availability of Goods as necessary;
10.2.4	If the event outside of Our control continues for more than 60 Business Days We will cancel the Contract and inform you of the cancellation. Any refunds due to you as a result of that cancellation will be paid to you as soon as is reasonably possible;
10.2.5	If an event outside of Our control occurs and you wish to cancel the Contract, you may do so in writing.

11. Communication, Complaints and Contact Details

If you wish to contact Us, you may do so by telephone at 07507 762238 or by email at greig@modaceramics.com. In certain circumstances you must contact Us in writing as set out in these Terms. We always welcome feedback from Our customers and, whilst We always use all reasonable endeavours to ensure that your experience as a customer of Ours is a positive one, We nevertheless want to hear from you if you have any cause for complaint. When contacting Us in writing you may use the following methods: (i) Contact Us by email at greig@modaceramics.com; or (ii) by post at Unit 6, Merlin Way, Hillend, Dunfermline KY11 9JY. How We Use Your Personal Information (Data Protection)

We will only use your personal information as set out in Our Privacy Notice available on request from greig@modaceramics.com.

12. Other Important Terms

We may transfer (assign) Our obligations and rights under these Terms and Conditions (and under the Contract, as applicable) to a third party (this may happen, for example, if We sell Our business). If this occurs you will be informed by Us in writing. You may not transfer (assign) your obligations and rights under these Terms and Conditions (and under the Contract, as applicable) without Our express written permission.

The Contract is between you and Us. It is not intended to benefit any other person or third party in any way and no such person or party will be entitled to enforce any provision of these Terms and Conditions.

If any of the provisions of these Terms and Conditions are found to be unlawful, invalid or otherwise unenforceable by any court or other authority, that / those provision(s) shall be deemed severed from the remainder of these Terms and Conditions. The remainder of these Terms and Conditions shall be valid and enforceable.

No failure or delay by Us in exercising any of Our rights under these Terms and Conditions means that We have waived that right, and no waiver by Us of a breach of any provision of these Terms and Conditions means that We will waive any subsequent breach of the same or any other provision.

13. Governing Law and Jurisdiction

These Terms and Conditions, the Contract, and the relationship between you and Us (whether contractual or otherwise) shall be governed by, and construed in accordance with the law of Scotland.

If you are a consumer, you will benefit from any mandatory provisions of the law in your country of residence. Nothing in these terms takes away or reduces your rights as a consumer to rely on those provisions.

Any dispute, controversy, proceedings or claim between you and Us relating to these Terms and Conditions, the Contract, or the relationship between you and Us (whether contractual or otherwise) shall be subject to the jurisdiction of the courts of Scotland.