

ONLINE TERMS AND CONDITIONS OF MODSAFE LEASE AGREEMENT

Modular Space Corporation ("ModSpace") and Customer agree to the following terms and conditions:

1. **LEASE TRANSACTION.** ModSpace hereby leases to Customer and Customer hereby leases from ModSpace the ModSafe™ equipment specified on the online lease confirmation sheet in accordance with the terms set forth in this Agreement. Reference is made to the online lease confirmation sheet with respect to the identification of, the lease term of and the rental and other charges with respect to the equipment covered thereby.
2. **DELIVERY AND INSTALLATION.** Customer warrants that the Site will have a safe access, free from encumbrances, and be level (no more than 6" difference in 60'), with soil bearing pressure in excess of 3,000 PSI. **MODSPACE ASSUMES NO LIABILITY NOR OFFERS ANY WARRANTY FOR THE FITNESS OR ADEQUACY OF THE SITE OR UTILITIES AVAILABLE AT THE SITE.** ModSpace will install the Equipment in accordance with the scope of work contained in ModSpace's quotation or proposal. Customer, at its cost, will obtain any and all licenses, titles, and permits, other than Equipment transportation, and any other approvals and certificates as may be required by law or otherwise for the installation, placement and occupancy of the Equipment. If ModSpace is requested to perform below grade site services Customer will verify and demonstrate to ModSpace the presence or absence of any underground utilities in the designated building location via "mark-out" or other accepted means prior to Equipment installation. Customer is responsible for all subsurface obstructions and conditions.
3. **TAXES.** Customer agrees to pay ModSpace any applicable state and local sales taxes, property tax, DMV, DOH, fees, and other fees applicable to the installation and rental of the Equipment.
4. **TIME OF PAYMENT.** Any amount not paid within twenty (20) days of the due date set forth on ModSpace's invoice will be subject to a late charge of one and one-half percent (1-1/2%) per month (or the highest rate permitted by law), with a minimum charge of fifteen dollars (\$15.00) per month, until such invoice is paid in full.
5. **NO TRANSFER OF TITLE.** This transaction is a lease as defined by the Uniform Commercial Code and not a sale. Customer does not acquire through this Lease or by payment of rental under this Lease any right, title or interest in or to the Equipment. Customer acknowledges that the Equipment is personal property and shall not, at any time, constitute real property, an improvement thereon or a fixture.
6. **LIMITATION OF WARRANTIES.** During the lease term ModSpace will repair or in its sole discretion replace, including material and labor, pending receipt of written notification from Customer, any structural component of the Equipment found to be defective and having an adverse impact on the operation and use of the Equipment, excepting for such defects attributable to Customer misuse/abuse/neglect. **Except as stated above, all other warranties of any kind, including specifically any express or implied warranty of merchantability and/or fitness for purpose other than commercial space are hereby excluded**
7. **MAINTENANCE.** Customer will not move or in any way modify the Equipment without prior written consent from ModSpace. Notwithstanding any such consent, Customer is liable, upon termination of the Lease, for the cost of restoration of the Equipment to its original specification and building code compliance. This is an absolute net lease. Customer is solely responsible for repairs of the Equipment and removal of snow from and about the Equipment. At its sole cost, Customer will keep the Equipment at all times in good repair and operating condition, subject to ordinary wear and tear, free of any and all liens and encumbrances and will maintain Site grading to ensure proper water diversion from the Equipment. Customer is solely responsible for damage due to settling.
8. **WAIVER OF DAMAGES.** Under no circumstances shall ModSpace or Customer be liable to the other for any special, incidental or consequential, damages resulting from this lease, including, but not limited to, loss of business or profits.
9. **EXCUSABLE DELAY.** ModSpace shall not be liable for any delay in delivering, installing or removing the Equipment or providing applicable services, resulting from but not limited to, acts of God, acts or delays of Customer, Customer's subcontractors, property owner, fires, strikes, labor disputes, war, acts of terrorism, civil commotion, acts or restrictions of any government, or other causes beyond the control of ModSpace.
10. **INSPECTION AND ACCEPTANCE.** Customer shall inspect the Equipment within forty-eight (48) hours of completion of ModSpace's obligations and provide immediate written notice to ModSpace specifying defects, if any, which Customer observes. If Customer fails to provide such notice within seventy-two (72) hours following completion of ModSpace's obligations, it shall be conclusively presumed that Customer has inspected the Equipment and that all work is in conformance with this Agreement and has been accepted by Customer.

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- 11. INSURANCE AND INDEMNITY** At its sole expense, Customer will procure and keep in full force and effect, from the initial delivery date until the removal of all Equipment the following policies of insurance (i) Commercial General Liability Insurance with a minimum combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate, written on an Occurrence Form, including coverage for premises, operations, contractual liability, broad form property damage and independent contractors, naming ModSpace as an additional insured. (ii) Commercial Property Insurance protecting against loss and damages, at the full Insurance Value, sustained or suffered due to any loss of or damage to the Equipment as a result of any peril or casualty, including flood, naming ModSpace and Bank of America, NA as a loss payee. In lieu of providing the above stated insurance Customer may, for an additional monthly fee, elect to enroll in ModSpace's Optional Insurance and Damage Waiver programs. Customer shall indemnify and save ModSpace harmless from any and all costs, loss, expense and liability related to Customer's obligations under this Agreement and Customer's use, possession and occupancy of the Equipment. Upon request, ModSpace will furnish its standard insurance certificate evidencing Workman's Compensation, General Liability and Auto Liability, each to be effective for ModSpace's performance of delivery, installation and removal of the Equipment.
- 12. DEFAULT** If Customer defaults in any of its obligations under this Lease and fails to cure such default within seven (7) days of written notice, ModSpace may pay all amounts or perform or cause to be performed all obligations required to be paid or performed by Customer under this Lease and recover from Customer all amounts so paid, including reasonable attorneys' fees, for ModSpace to enforce any of Customer's obligations, or any of the terms and conditions of this Agreement, or any of its rights and remedies existing at law or in equity.
- 13. TERMINATION.** Subsequent to the delivery of the Equipment, Customer has no right to terminate this Lease prior to the expiration of the Minimum Lease Period or any renewal or extension thereof. Acceptance of Equipment return before expiry of the Minimum Lease Period or any renewal or extension does not constitute a release of Customer's rental obligations. In the event Customer terminates this Lease prior to the delivery of the Equipment, Customer further unconditionally agrees to pay a cancellation charge equal to the remaining payments for the Minimum Lease Period plus any applicable charges for other services completed by ModSpace. Prior to Equipment return, Customer will, at its sole cost, remove all personal property and vacate the Equipment. ModSpace will not be liable for any personal property left in or on the Equipment, and such property shall be deemed abandoned. Under all events of termination, Customer is responsible for Equipment return delivery, demobilization and damage repair charges.
- 14. GOVERNING LAW.** This Agreement and its performance shall be governed exclusively under the laws of the Commonwealth of Pennsylvania. The Parties agree that venue for any dispute relating to or arising from this Agreement shall lie in Chester County, Pennsylvania, and any lawsuit or litigation shall be brought in the courts having situs in the Eastern District of Pennsylvania and Chester County, Pennsylvania.
- 15. ASSIGNMENT.** Customer shall not assign or transfer this Agreement or any part hereof without the prior written consent of ModSpace.
- 16. ENTIRE AGREEMENT.** This Agreement constitutes the entire contract between ModSpace and Customer. ModSpace's offer to lease the Equipment to Customer is expressly limited to acceptance of the terms hereof. ModSpace shall not be responsible for any terms or conditions that may be part of Customer's contract with its client or as contained in any Customer document, irrespective of any signature by ModSpace. The failure by ModSpace to enforce at any time, or for any period of time, any one or more of the terms of this Agreement shall not be a waiver of such terms and conditions or of ModSpace's right thereafter to enforce each and every term and condition contained herein. Sections 2, 4, 7, 10 and 13 shall survive termination of the Agreement.