

MÖDERE™

TERMS OF USE

# INTRODUCTION

WELCOME TO THE SHIFTINGRETAIL.CO.NZ WEBSITE (THE "SITE"). MODERE NEW ZEALAND LTD (HEREAFTER "WE", "OUR", "US" OR "MODERE") PROVIDES SERVICES TO YOU SUBJECT TO THE NOTICES, TERMS, AND CONDITIONS SET FORTH IN THIS AGREEMENT (THE "AGREEMENT"). IN ADDITION, WHEN YOU USE ANY OF OUR SERVICES (E.G., CUSTOMER REVIEWS), YOU WILL BE SUBJECT TO THE RULES, GUIDELINES, POLICIES, TERMS, AND CONDITIONS APPLICABLE TO SUCH SERVICE, AND THEY ARE INCORPORATED INTO THIS AGREEMENT BY THIS REFERENCE. WE RESERVE THE RIGHT TO CHANGE THIS SITE AND THESE TERMS AND CONDITIONS AT ANY TIME. **ACCESSING, BROWSING OR OTHERWISE USING THE SITE INDICATES YOUR AGREEMENT TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT, SO PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PROCEEDING.**

# USE OF SITE

The Shiftingretail site is not targeted towards, nor intended for use by, anyone under the age of 18. By using the Modere Site, you represent and warrant that you are 18 years of age or older. If you are not at least 18 years of age, do not access, use or register on the Modere Site. In the event we become aware you are under 18, we will terminate your registration.

Subject to the terms and conditions of this Agreement, we hereby grant you a limited, revocable, non-transferable and non-exclusive license to access and use the Site by displaying it on your internet browser only for the purpose of shopping for personal items sold on the Site and not for any commercial use or use on behalf of any third party, except as explicitly permitted by us in advance. Any breach of this Agreement shall result in the immediate revocation of the license granted in this paragraph without notice to you.

Except as permitted in the paragraph above, you may not reproduce, distribute, display, sell, lease, transmit, create derivative works from, translate, modify, reverse-engineer, disassemble, decompile or otherwise exploit this Site or any portion of it unless expressly permitted by Modere in writing. You may not make any commercial use of any of the information provided on the Site or make any use of the Site for the benefit of another business unless explicitly permitted by us in advance. Modere reserves the right to refuse service, terminate accounts, and/or cancel orders at its discretion, including, without limitation, in a situation where Modere believes that customer conduct violates applicable law or is harmful to its interests.

You shall not upload to, distribute, or otherwise publish through this Site any Content, information, or other material that (a) violates or infringes the copyrights, patents, trademarks, service marks, trade secrets, or other proprietary rights of any person; (b) is libellous, threatening, defamatory, obscene, indecent, pornographic, or could give rise to any civil or criminal liability under New Zealand or international law; or (c) includes any bugs, viruses, worms, trap doors, Trojan horses or other harmful code or properties.

Content provided on this site is solely for informational purposes and not a substitute for medical advice. The Modere Site does not provide medical advice. It is your sole responsibility to consult a licensed physician or qualified health care professional for advice, diagnosis, and/or treatment of any health related condition. If you need immediate medical attention, contact your physician or local emergency medical professionals without delay. Submissions or opinions expressed on this Site are that of the individual expressing such Submission or opinion and may not reflect our opinions.

# CHANGES TO SHIFTINGRETAIL SITE

You agree and understand that the Shiftingretail Site, including any and all features available via the Modere Site and any User Content (as defined below), may be modified by us, in our sole discretion, at any time without prior notice. Unless expressly stated otherwise, any new features, new services, enhancements or modifications to the Modere Site implemented after your initial access to the Modere Site shall be subject to these Terms of Use. We reserve the right to investigate and take appropriate action, including legal action, in our sole discretion, against anyone who violates these Terms of Use, including without limitation, by removing any User Content posted in violation of these Terms of Use, terminating the registration of such violators or blocking such violator's use of the Shiftingretail Site.

# REGISTRATION

In order to access some features of the Shiftingretail Site, you may be required to register and submit an email address ("User ID") and select a password. If you register, you agree to provide us with accurate and complete registration information, and to inform us immediately of any updates or other changes to such information. For example, you may not: (i) access an account controlled by another person with the intent to impersonate that person, or (ii) use as a User ID a name subject to any rights of a person other than yourself without appropriate authorization. Failure to comply with the terms of this paragraph shall constitute a material breach of these Terms of Use, which may result in immediate termination of your account. In addition, we reserve the right to refuse registration of, or cancel a User ID in our discretion.

By providing modere.co.nz your email address, you consent to our using that email address to send you Service-related notices, including any notices required by law, in lieu of communication by postal mail. We may also use your email address to send you other messages, such as changes to features of the Service and special offers. If you do not want to receive such email messages, you may opt out unsubscribing from any of our emails. Opting out may prevent you from receiving email messages regarding updates, improvements, or offers.

# SECURE PASSWORD GUIDELINES

Modere New Zealand Ltd recommends the following guidelines when establishing your Modere Site password:

- At least 8 characters
- At least 1 uppercase letter (A-Z)
- At least 1 lowercase letter (a-z)
- At least 1 numeric value (0-9)

It is also a sound practice to differentiate passwords across multiple online accounts. Using the same credentials for multiple online accounts creates the potential for security breaches.

Each time you use your User ID and password to access your Shiftingretail Site account, you will be deemed to be authorised to access and use the Site in a manner consistent with the terms and conditions of this Agreement, and we have no obligation to investigate the authorization or source of any such access or use of the Site. YOU WILL BE SOLELY RESPONSIBLE FOR ALL ACCESS TO AND USE OF THIS SITE BY ANYONE USING THE USER ID AND PASSWORD ASSIGNED TO YOU WHETHER OR NOT SUCH ACCESS TO AND USE OF THIS SITE IS ACTUALLY AUTHORISED BY YOU, INCLUDING WITHOUT LIMITATION, ALL COMMUNICATIONS AND TRANSMISSIONS AND ALL OBLIGATIONS (INCLUDING WITHOUT LIMITATION FINANCIAL OBLIGATIONS) INCURRED THROUGH SUCH ACCESS OR USE. You are solely responsible for protecting the security and confidentiality of the User ID and password assigned to you. You shall immediately notify us of any unauthorised use of your User ID and password or any other breach or threatened breach of this Site's security.

# PLACING AN ORDER

Modere ships orders only to locations within New Zealand. Orders cannot be changed or cancelled once submitted. All returns of product are subject to the Modere return policy.

# REVIEWS AND COMMENTS

Except as otherwise provided elsewhere in this Agreement or on the Site, anything that you submit or post to the Site and/or provide us, including without limitation, ideas, know-how, techniques, questions, reviews, comments, and suggestions (collectively, "Submissions") is and will be treated as non-confidential and non-proprietary, and we shall have the royalty-free, worldwide, perpetual, irrevocable and transferable right to use, copy, distribute, display, publish, perform, sell, lease, transmit, adapt, create derivative works from such Submissions by any means and in any form, and to translate, modify, reverse-engineer, disassemble, or decompile such Submissions. All Submissions shall automatically become our sole and exclusive property and shall not be returned to you.

In addition to the rights applicable to any Submission, when you post comments or reviews to the Site, you also grant us the right to use the name that you submit with any review, comment, or other Content, if any, in connection with such review, comment, or other content. You represent and warrant that you own or otherwise control all of the rights to the reviews, comments and other Content that you post on this Site and that use of your reviews, comments, or other Content by us will not infringe upon or violate the rights of any third party. You shall not use a false email address, pretend to be someone other than yourself or otherwise mislead us or third parties as to the origin of any Submissions or Content. We may, but shall not be obligated to, remove or edit any Submissions (including comments or reviews) for any reason.

# INTELLECTUAL PROPERTY

All text, graphics, button icons, images, audio clips, and software (collectively, "Content"), belongs exclusively to Modere, or its affiliates. The collection, arrangement, and assembly of all Content on this Site (the "Compilation") belongs exclusively to Modere or its affiliates. All software used on this Site (the "Software") is the property of Modere, its affiliates or its Software suppliers. The Content, the Compilation and the Software are all protected by New Zealand and international copyright laws. SHIFTINGRETAIL.COM.AU, (& design), and other logos, slogans, trade names or words are registered trademarks, trademarks or service marks of Modere New Zealand Pty Ltd., its affiliates or suppliers.

The use of any of our trademarks or service marks without our express written consent is strictly prohibited. You may not use our trademarks or service marks in connection with any product or service in any way that is likely to cause confusion. You may not use our trademarks or service marks in any manner that disparages or discredits us. You may not use any of our trademarks or service marks in meta tags without prior explicit consent.

# PRIVACY POLICY

Please review our Privacy Policy, which also governs your visit to this Site, to understand our practices. Our Privacy Policy is available at [images.modere.com.au/new\\_zealand/docs/NZ\\_modereprivacypolicy.pdf](https://images.modere.com.au/new_zealand/docs/NZ_modereprivacypolicy.pdf).

# TERMINATION AND EFFECT OF TERMINATION

In addition to any other legal or equitable remedies, we may, without prior notice to you, immediately terminate this Agreement or revoke any or all of your rights granted under this Agreement. Upon any termination of this Agreement, you shall immediately cease all access to and use of the Site and we shall, in addition to any other legal or equitable remedies, immediately revoke all password(s) and account identification issued to you and deny your access to and use of this Site in whole or in part. Any termination of this Agreement shall not affect the respective rights and obligations (including without limitation, payment obligations) of the parties arising before the date of termination.

# INTERNATIONAL ACCESS

This Site may be accessed from countries other than New Zealand. This Site may contain products or references to products that are not available outside of New Zealand. Any such references do not imply that such products will be made available outside New Zealand. If you access and use this Site outside New Zealand you are responsible for complying with your local laws and regulations.

# TYPOGRAPHICAL ERRORS

In the event a product is listed at an incorrect price or with incorrect information due to typographical error or error in pricing or product information received from our suppliers, we shall have the right to refuse or cancel any orders placed for product listed at the incorrect price. We shall have the right to refuse or cancel any such orders whether or not the order has been confirmed and your credit card charged. If your credit card has already been charged for the purchase and your order is cancelled, we shall immediately issue a credit to your credit card account in the amount of the charge.

# APPLICABLE BY LAW

This site is created and controlled by us in New Zealand. As such, the law of New Zealand will govern these disclaimers, terms, and conditions, without giving effect to any principles of conflicts of laws.

# DISCLAIMER AND LIMITATION OF LIABILITY

THIS SITE, THE PRODUCTS OFFERED FOR SALE ON IT AND THE TRANSACTIONS CONDUCTED THROUGH IT ARE PROVIDED BY US ON AN "AS IS" BASIS. WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE SITE OR THE INFORMATION, CONTENT, MATERIALS, OR PRODUCTS INCLUDED ON THIS SITE. EXCEPT FOR ANY WARRANTIES THAT ARE EXPRESSLY PROVIDED, TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, DATA ACCURACY AND SYSTEM INTEGRATION. THIS SITE MAY INCLUDE INACCURACIES, MISTAKES OR TYPOGRAPHICAL ERRORS. WE DO NOT WARRANT THAT THE CONTENT WILL BE UNINTERRUPTED OR ERROR FREE.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE OF THIS SITE, INCLUDING, BUT NOT LIMITED TO INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

# DISPUTES

Any dispute relating in any way to your visit to the Site or to the products you purchase through the Site shall be submitted to confidential arbitration in Auckland, New Zealand, and regulated by the Arbitration Act 1996 (Act) except that to the extent you have in any manner violated or threatened to violate our intellectual property rights, we may seek injunctive or other appropriate relief in court in New Zealand. You hereby consent to, and waive all defences of lack of jurisdiction and forum non conveniens with respect to venue and jurisdiction in the state courts of New Zealand. The parties shall utilise an arbitrator appointed by the then President of the Arbitrators' and Mediators' Institute of New Zealand Inc and be bound by such orders and directions as the arbitrator thinks fit as to the process and procedure of the arbitration and enforceable in accordance with the Act. The parties agree to allow appeals to a court against the arbitrator's award as permitted by the Act. To the fullest extent permitted by applicable law, no arbitration under this Agreement shall be joined to an arbitration involving any other party, whether through class action proceedings or otherwise. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of, related to or connected with the use of the Site or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever banned.

# OUR ADDRESS

Please send any questions or comments (including all inquiries unrelated to copyright infringement) regarding this Site to:

Modere New Zealand Ltd PO Box 71176, Rosebank, Auckland 1348 or email us at [info@modere.co.nz](mailto:info@modere.co.nz)



**MODERE NEW ZEALAND LTD**

PO BOX 71176  
ROSEBANK  
AUCKLAND  
1348

VERSION 2  
R09/15