

These terms and conditions (**Terms**) apply to all services offered by Perpetuity International Pty Limited (ABN 28 096 977 249) trading as MODARTE (**MODARTE**). The services include the use of any of MODARTE's online and/or mobile services, including the MODARTE Facebook, Twitter, Instagram, YouTube, Pinterest, Google+ social media pages and any other social media pages used by MODARTE from time to time (**Social Media Pages**), the website [www.modarte.com.au](http://www.modarte.com.au) (the **Website**), and software provided on or in connection with the services (the **Services**). In these Terms, "we" "us" and "our" refers to MODARTE and we refer to you as "you", "your" or the "User".

By accessing or using the Services, you signify that you have read, understood, and agree to be bound by these Terms and the MODARTE Privacy Policy available [here](#). MODARTE may change all or part of the Terms at any time. If we do, the new Terms will be posted on the Website. Your subsequent or continued use of the Services will constitute your acceptance of any changes. If you object to these Terms or any changes to the Terms, your only remedy is to immediately discontinue your use of the Services.

## 1. Using the Services

### 1.1

The User acknowledges that MODARTE reserves the right change the Services; stop providing the Services or features of the Services, to you or to Users generally; or create usage limits for the Services. MODARTE may temporarily or permanently suspend or terminate access to the Services without notice and liability for any reason, including if in our sole determination you violate any provision of these Terms.

### 1.2

Access to and use of password protected and/or secure areas of the Website are restricted to authorised Users only. Unauthorised individuals attempting to access these areas of the Website may be subject to prosecution.

### 1.3

The User must not use the Services to (or attempt to) upload, copy, post, transmit or otherwise make available any text, illustrations, photos, audio, video, or any other material (**Material**) or do any activity that:

Is not your original work, or which in any way violates or infringes (or could reasonably be expected to violate or infringe) third-party rights of any kind, including without limitation any patent, copyright, moral rights, trade mark and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction;

Contains any information or content that you know is not correct and current; contains, promotes, or provides information about unlawful activities or conduct;

Could harm, abuse, harass, stalk, threaten or could reasonably be expected to be, defamatory, obscene, offensive, threatening, abusive, pornographic, vulgar, profane, indecent or otherwise unlawful, including Material that racially or religiously vilifies, incites violence or hatred, or is likely to offend, insult or humiliate others based on race, religion, ethnicity, gender, age, sexual orientation or any physical or mental disability;

May create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to any person;

May create a risk of any other loss or damage to any property;

May constitute or contribute to a crime or offence;

Includes an image or personal information of another person or persons unless you have their consent;

Impersonates any person or entity;

Poses or creates a privacy or security risk to any person;

Transmits (or authorise the transmission of) "junk mail," "chain letters," unsolicited emails, instant messaging, or "spamming";

Solicits money, passwords or personal information from any person; you know or suspect (or ought reasonably to have known or suspected) to be false, misleading or deceptive;

Contains viruses, or other computer codes, files or programs designed to interrupt, limit or destroy the functionality of other computer software or hardware; or is in breach of any applicable laws or regulations.

#### 1.4

By uploading, transmitting, posting or otherwise making available any Material via the Services, the User:

Grants MODARTE (and its successors' and affiliates') business a non-exclusive, worldwide, irrevocable, royalty-free, perpetual, transferrable licence to use, reproduce, modify, publish, list information regarding, edit, translate, distribute, syndicate, publicly perform, publicly display, and make derivative works of all such Material and your name, voice, and/or likeness as contained in your Material, in whole or in part, and in any form, media or technology, whether now known or hereafter developed, for use in connection with the Service and MODARTE's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels; warrants that you have the right to grant the abovementioned licences;

Warrants that the Material does not breach the Terms; and

Unconditionally waive all moral rights (as defined by the Copyright Act 1968) which you may have in respect of the Material.

#### 1.5

MODARTE reserves the right (but have no obligation) to:

Review, modify, reformat, reject or remove any Material which you upload, post, transmit or otherwise make available (or attempt to upload, post, transmit or otherwise make available) that, in our opinion, violates the Terms or otherwise has the potential to harm, endanger or violate the rights of any person;

Monitor use of the Services and store or disclose any information that we collect, including in order to investigate compliance with the Terms or for the purposes of any police investigation or governmental request; and

Monitor disputes between you and other Users.

#### 1.6

MODARTE reserves the right, in its sole discretion, to assert legal action with respect to Material or use of the Services, that MODARTE reasonably believes is or might be in violation of these Terms or MODARTE Policies. MODARTE's failure or delay in taking such actions does not constitute a waiver of its rights to enforce these Terms.

#### 1.7

MODARTE will not be responsible for, and accept no liability with respect to, any Material uploaded, posted, transmitted or otherwise made available on the Services or posted on a third party platform about MODARTE and/ or the Services by any User or any other person or third party other than us. For the avoidance of doubt, we will not be taken to have uploaded, posted, transmitted or otherwise made Material available on the Services simply by facilitating others to post, transmit or other make Material available. Furthermore, we do not endorse any opinion, advice or statement made by any User or any other person or entity other than us.

#### 1.8

When you use the Services or send emails to MODARTE you are communicating with MODARTE electronically. You consent to receive communications electronically from MODARTE and its associated entities (as outlined in Privacy Policy). MODARTE will communicate with you by email or by posting notices on the Website or Social Media Pages. You agree that all agreements, notices, disclosures and other communications that are provided to you electronically satisfy any legal requirement that such communications be in writing.

## 1.9

You consent to receive communications electronically from MODARTE and its associated entities (as outlined in Privacy Policy). MODARTE will communicate with you by email or by posting notices on the Website. You agree that all agreements, notices, disclosures and other communications that are provided to you electronically satisfy any legal requirement that such communications be in writing.

## 2. Member Accounts

### 2.1

In order to access some of the Services provided on the Website, you must become a member by creating a member account (**Member Account**).

### 2.2

Membership to the Website is free.

### 2.3

When registering for your Member Account you must provide certain information as set out on our membership/registration page. Please refer to our Privacy Policy linked on our home page for information relating to our collection, storage and use of the details you provide on registration.

### 2.4

You agree to ensure that your registration details are true and accurate at all times and you undertake to update your registration details from time to time when they change.

### 2.5

On registration of your Member Account you will be provided with a password and username. You are solely responsible for the activity that occurs on your Member Account (including unauthorised use of your credit card) and you must keep your account password secure.

### 2.6

You must notify MODARTE immediately of any breach of security or unauthorised use of your Member Account. MODARTE will not be liable for any losses caused by any unauthorised use of your Member Account. You are prohibited from using another Member's Member Account without permission.

### 2.7

We reserve the right to terminate your Membership Account at any time.

### 2.8

From time to time MODARTE may offer special promotional offers which may or may not apply to your Member Account. In addition to these Terms, you agree to be bound by any additional terms and conditions for these special offers.

## 3. Privacy

### 3.1

We undertake to take all due care with any information which you may provide to us when accessing our Services. However, we do not warrant and cannot ensure the security of any information which you may provide to us. Information you transmit to us is entirely at your own risk although we undertake to take reasonable steps to preserve such information in a secure manner. Our compliance with privacy legislation is set out in our separate Privacy Policy which may be accessed [here](#).

### 3.2

By providing your email address to MODARTE you consent to our using the email address to contact you regarding changes to features of the Service and special offers and promotions. If you do not want to receive such email messages, you may opt out. Opting out may prevent you from receiving email messages regarding updates, improvements, or offers.

## 4. Intellectual Property

### 4.1

You acknowledge that MODARTE owns all right, title, and interest, including all intellectual property rights, in the Services including the trade name, logos, trade marks, and service marks, and any content, data, software, technology, tools, or business methods used by MODARTE to develop,

promote, market, sell, generate, or distribute the Services and otherwise perform under these Terms (collectively the "MODARTE IP"), are the exclusive property of MODARTE and its licensors. Except as explicitly provided herein, nothing in these Terms will be deemed to create a license, title or interest in or under any MODARTE IP, and you agree not to sell, license, rent, modify, distribute, transfer, download, display, copy, reproduce, transmit, publicly display, translate, reverse engineer, decompile or disassemble publicly perform, publish, adapt, edit or create derivative works from any MODARTE IP without the express written consent of MODARTE. Use of the MODARTE IP for any purpose not expressly permitted by these Terms is strictly prohibited.

#### 4.2

You shall not use or display the MODARTE IP in any way that states or implies that MODARTE has endorsed or approved your products or services.

#### 4.3

All goodwill and improved reputation in respect of and associated with the MODARTE IP will vest to the sole benefit of MODARTE.

#### 4.4

You may choose to or we may invite you to submit comments or ideas about the Services, including without limitation about how to improve the Service or our products ("Ideas"). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place MODARTE under any fiduciary or other obligation, and that we are free to use the Idea without any compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, MODARTE does not waive any rights to use similar or related ideas previously known to MODARTE, or developed by its employees, or obtained from sources other than you.

#### 4.5

MODARTE takes no responsibility and assumes no liability for any Material that you or any other User or third party posts or sends over the Services. You will be solely responsible for your Material and the consequences of posting or publishing it.

### 5. Third Party Websites

#### 5.1

Our Services may link to third party websites or resources which are not owned or operated by MODARTE. Because MODARTE has no control over such sites and resources, you acknowledge and agree that MODARTE is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products or other materials on or available from such sites or resources. MODARTE is not responsible for the terms and conditions pertaining to, these external sites. We recommend that you investigate these sites own terms and conditions.

#### 5.2

You further acknowledge and agree that MODARTE shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

### 6. Representations & Warranties

#### 6.1

The User represents and warrants that: (a) it will comply with all laws applicable to its obligations under these Terms; (c) any Material, including any representations made by the User do not and will not infringe, misappropriate, or otherwise violate any intellectual property right or right of any third party.

#### 6.2

To the maximum extent permitted by law the MODARTE Services are provided "as is", without any warranty of any kind, and on an "as available" basis. MODARTE makes no representations or warranties, express or implied, including without limitation any implied warranty that the Services are merchantable, of satisfactory quality, reliable, accurate, fit for a particular purpose, non-

infringing or free of defects, errors or other harmful components or able to operate on an uninterrupted basis, or that the use of the Services by the User is in compliance with applicable laws or that information transmitted in connection with the Services will be successfully, accurately or securely transmitted.

#### 6.3

MODARTE does not endorse and is not responsible for (a) the accuracy or reliability of any opinion, advice or statement made through the Services by any party other than MODARTE, (b) any content provided on linked sites or (c) the capabilities or reliability of any product or service obtained from a linked site.

#### 6.4

Other than as required under applicable consumer protection law, under no circumstance will MODARTE be liable for any loss or damage caused by a User's reliance on information obtained through the Services or a linked site, or user's reliance on any product or service obtained from a linked site. It is the responsibility of the User to evaluate the accuracy, completeness or usefulness of any opinion, advice or other content available through the Services, or obtained from a linked site. Please seek the advice of professionals, as appropriate, regarding the evaluation of any specific opinion, advice, product, service, or other content.

### 7. Indemnities

#### 7.1

The User, at your sole cost and expense, will defend, indemnify and hold MODARTE (its officers, directors, agents, subsidiaries and employees) harmless from and against any claims, lawsuits, demands, actions, proceedings or investigations from and against any fees, costs, sanctions, penalties, damages, losses or expenses (including but not limited to legal fees and costs) arising out of or relating to any of the following:

your (i) fraud, wilful misconduct, or negligence or (ii) breach or alleged breach of these Terms;

your Material; or

any infringement, misappropriation, or other violation, of any patent, trade mark, copyright, publicity, privacy, trade secret, or other right of any third party by you, your Material, or the use thereof.

### 8. Limitation of Liability

#### 8.1

To the maximum extent permitted by applicable law MODARTE and its directors, officers, employees, partners, contractors, subsidiaries, agents, licensors, managers and affiliated companies will not be liable for any indirect, punitive, incidental, special, consequential or exemplary damages, including without limitation damages for loss of profits, goodwill, use, data or other intangible losses (even if MODARTE has been advised on the possibility of such losses), that result from the use of, or inability to use, the Services.

#### 8.2

Under no circumstances will MODARTE be responsible for any damage, loss or injury resulting from hacking, tampering or other unauthorised access or use of the Services.

#### 8.3

To the maximum extent permitted by applicable law, MODARTE assumes no liability or responsibility for:

any errors, mistakes, or inaccuracies of content;

any personal injury or property damage, of any nature whatsoever, resulting from your access to or use of our Services;

any unauthorised access to or use of our secure servers and/or any and all personal information stored therein;

any interruption or cessation of transmission to or from the Services;

any bugs, viruses, trojan horses, or the like that may be transmitted to or through our Services by any third party;

any errors or omissions in any content or for any loss or damage incurred as a result of the use of any content posted, emailed, transmitted, or otherwise made available through the Services; and/or any Material or the defamatory, offensive, or illegal conduct of any third party.

## 9. General

### 9.1

Headings are for reference purposes only and do not limit the scope or extent of such section.

### 9.2

If any of the provisions set out in these Terms are determined to be void or unenforceable then that provision must be read down to avoid that result or if the provision cannot be read down then it must be severed and the rest of the Terms will remain in full force and affect.

### 9.3

The failure of MODARTE to enforce any provision of these Terms at any time or for any period of time will not be construed to be a waiver of such provision or of the rights of MODARTE to enforce each and every provision of these Terms.

### 9.4

These Terms are to be governed by and construed in accordance with the laws of New South Wales. The User irrevocably consents to the exclusive jurisdiction of the courts of New South Wales for purposes of any legal action arising out of or related to the use of the Services or these Terms