

DOKA USA LTD. GENERAL TERMS AND CONDITIONS

These Terms and Conditions constitute a legally binding agreement made between Doka USA Ltd. (“Doka”) and you (“Customer”), concerning Customer’s rental or purchase of products and services from Doka. Customer agrees that by accessing this page, Customer represents and warrants that it has read, understood, and agree to be bound by these Terms and Conditions.

Supplemental terms and conditions or documents that may be posted on this page from time to time are hereby expressly incorporated herein by reference. Doka reserves the right, in its sole discretion, to make changes or modifications to these Terms and Conditions at any time and for any reason. All changes are effective immediately when we post them and we will use reasonable efforts to alert you about any changes by updating the “Last updated” date of these Terms and Conditions. You waive any right to receive specific notice of each such change. It is your responsibility to periodically review these Terms and Conditions to stay informed of updates. You will be subject to and will be deemed to have been made aware of and to have accepted the changes in any revised Terms and Conditions by your continued use of Doka’s products and services after the date such revised Terms and Conditions are posted.

1. **Acceptance:** Customer may accept this Agreement, including all terms and conditions contained therein, by signing and returning a copy of the Proposal issued to Customer by Doka or accepting shipment of Doka’s products or services. This Agreement, which includes the information and terms contained in Doka’s proposal, price lists, and these General Terms and Conditions, shall constitute the entire agreement between the parties. Any additional or different terms proposed by the Customer are expressly rejected and are not binding on Doka unless specifically accepted, in writing, by an authorized representative of Doka.
2. **Payment Terms.** Unless otherwise specified in the Proposal, payment is due within thirty (30) days of the date on Doka’s invoice. Retainage shall not be withheld from any payments. If Customer fails to pay invoices when due, Doka may, without liability, obligation, or penalty, suspend shipments of products and services to Customer. A service charge of one and one-half percent (1.5%) per month, or the maximum amount permitted by law, whichever is less, will be imposed on the unpaid balance of overdue accounts.
 - a. **Forms of Payment.** Doka accepts payment via check, ACH transfer, or credit card. The service fee listed on Doka’s credit card authorization form shall be charged on all credit card transactions. Payments via check shall be sent to a lockbox or handled by administrative personnel who cannot bind Doka, therefore any notation on a check or payment such as “paid in full”, “final payment”, or any other language attempting to convey an accord and satisfaction of the debt owed hereunder shall not be binding on Doka regardless of the negotiation of the check or payment unless an authorized representative of Doka and Customer execute a separate, written agreement and/or release
 - b. **Application of Payment.** All payments made under this Agreement are applied as follows: first to the payment of any interest and fees, including, without limitation, attorney’s fees, and second to unpaid invoices from oldest outstanding invoice to most recent.
 - c. **Credit Limits.** All proposals are subject to credit approval by Doka. Credit approval shall apply to Customer as a whole and not on a project by project basis. If Customer exhausts its credit limit, Doka may, without liability, obligation, or penalty, stop shipment of products and/or services to Customer on this or any other project.
 - d. **Taxes.** All prices exclude state and/or local sales taxes.
3. **Shipment.**
 - a. **Time for Shipment.** Time for shipment and delivery of products and services is approximate and is based upon timely receipt of information and approvals from Customer. Customer is responsible for loading, unloading, and waiting time at the project site.
 - b. **Acceptance of Delivery.** A bill of lading shall accompany each delivery of products. Customer’s failure to sign a bill of lading upon delivery shall not excuse Customer’s obligations to pay for products delivered. Customer shall inspect the products and notify Doka of any defects, non-conformities, including discrepancies between the quantities listed on the bill of lading and Customer’s count, within three (3) business days of delivery. Customers’ failure to provide written notice to Doka within such three (3) business day period shall constitute a waiver of any and all claims arising out of the delivery of non-conforming or defective products or discrepancies in quantities, except to the extent that such defects or non-conformities are hidden or latent.

- c. **Rental Period.** Rental rates are charged on a 28-day cycle. Rental starts on date of delivery to Customer and ends on the date each item is returned to Doka. The minimum rental period is 28 days. All rental products are subject to availability. In no event shall Customer remove, or cause or permit to be removed, the rented products to any location other than the project site.
 - d. **Price Lists.** Prices charged are based on the most current price list as of the date of shipment
 - e. **Quantities Estimated.** All quantities are estimates based on information available at the time of the Agreement. Actual product layouts and field requirements will determine the specific quantities of products shipped and may result in billing that is higher or lower than the figures indicated in this Agreement.
 - f. **Additional Products.** If Customer requires additional products, the additional products shall be subject to the same terms and conditions of this Agreement. Delivery dates of additional products are not guaranteed and such products will be shipped based on availability.
 - g. **Freight.** Unless noted otherwise in the Agreement, Customer is responsible for all freight costs and all prices are quoted F.O.B. shipping point. Doka may assist in the procurement of freight providers for delivery or return of products and will invoice Customer for all costs, regardless of whether they exceed the estimated freight costs contained herein. Claims for shortages or damages to shipments shall be made exclusively against the carrier by Customer. Doka shall not be liable for any loss, damage, or other inconvenience of any kind whatsoever, resulting from the lack of performance of a third party shipper or common carrier. All carriers are agents of Customer.
 - h. **Risk of Loss.** All risk of loss or damage, including theft and destruction, to the products shall pass to the Customer when the carrier takes possession of the products or delivery to the Project Site, whichever is earlier. Customer will promptly notify Doka of rented products that are lost or damaged and will not commingle Products with materials of others.
4. **Title.** Doka grants no right, title, or interest in or to rented products, other than the right to the possession and use of the same in accordance with the terms of this Agreement. Doka grants no right, title, or interest in or to purchased products, other than the right to the possession and use of the same in accordance with the terms of this Agreement until the full purchase price is paid.
5. **Services.**
- a. **On-Site Assistance.** Prices quoted herein include periodic on-site assistance by Doka's account manager for standard applications of Doka systems. For special applications and technically advanced formwork solutions, additional charges for a professional on-site service technician to train Customer's staff in the use of the formwork shall apply.
 - b. **Design Services – Layout/Drawings.** Unless noted otherwise in the Agreement, formwork layout drawings ("Drawings") for erection of the products and the typical use at Customer's project are not included. Should such Drawings be requested, they will be billed at the then-current rates. Unless noted otherwise, Drawings will be based on ACI-347 Guide to Formwork for Concrete. Any Drawings furnished by Doka to Customer are provided to conceptually illustrate the assembly of Doka's products only. Such Drawings are not intended to be directive nor cover engineering details on Doka's products, or equipment or material not furnished by Doka, or the interconnection therewith. Doka does not control assembly, procedures at the project site, or the grade or quality of materials or equipment supplied by third parties. It is the responsibility of Customer to integrate the Drawings into composite drawings suitably complete for construction purposes consistent with safe practice and overall project objectives.
 - c. **Engineering – PE Stamps.** Drawings stamped by a professional engineer ("P.E.") are not included. If Customer requests Drawings for standard application of standard products to be reviewed and stamped by a licensed professional engineer, Customer will be billed for stamped Drawings at the then-current rates (expedited requests are subject to an additional service charge). If P.E. Stamping is requested, the P.E. must review and stamp all drawings within the work package in accordance with applicable law. P.E. stamps may not be limited to a subset of drawings within the work package. Any additional Engineering services or calculations will be billed at the then-current hourly rates which will be provided to Customer on request.
6. **Warranty.** Doka expressly warrants to Customer that, with respect to products fabricated by Doka, the products will comply with the description set forth herein and, be of good quality, and be free from defects in products and

workmanship provided that (a) the products are subjected to normal use and maintained by Customer in accordance with Doka's instructions/manuals and/or industry standards; (b) the products have not been modified from its original condition, and (c) the Customer gives prompt written notice to Doka specifying all alleged defects in the products. If any inherent defects in design, workmanship or products purchased or rented hereunder shall be discovered by Customer and Customer gives Doka prompt notice of such defects, Doka shall, in its sole discretion, repair or replace defective items at its expense, F.O.B. Doka's facility. The aforementioned repairs by Doka shall constitute Customer's sole remedy and Doka's sole liability whether on warranty, contract, or tort grounds. **DOKA DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, ON PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR SUITABILITY. EXCEPT FOR THE ABOVE WARRANTY, DOKA MANUFACTURED PRODUCTS ARE SUPPLIED AS IS. FOR PRODUCTS MANUFACTURED BY OTHERS BUT PROVIDED UNDER THE AGREEMENT, DOKA PROVIDES NO WARRANTIES AND DISCLAIMS ALL IMPLIED WARRANTIES, BUT DOKA TRANSFERS AND ASSIGNS TO CUSTOMER ANY WARRANTY PROVIDED BY THE MANUFACTURER.**

7. **Indemnity.** To the fullest extent permitted by law, Customer agrees to defend, indemnify and hold harmless Doka from and against any and all alleged or actual claims, suits, demands, losses, damages, injury, liens, penalties, costs, judgments, expenses, and/or liabilities (including attorney's fees, consulting fees, and all costs) (collectively "Losses") arising out of (i) the use of products or services by Customer, its agents, employees, assigns, or any contractors or subcontractors, (ii) any negligence of Customer, its agents, employees, assigns, or any contractors or subcontractors, or (iv) Customer's breach of this agreement, except to the extent that such Losses are caused by Doka. Customer's obligations hereunder shall not be limited by the provisions of any worker's compensation laws or by the existence of any insurance.
8. **Insurance.** Doka and Customer shall maintain the following insurance coverage during the term of this Agreement: *Commercial General Liability*: \$1,000,000 per occurrence and \$1,000,000 aggregate; \$1,000,000 products/completed operations aggregate; *Automobile*: \$1,000,000 combined single limit; *Worker's Compensation*:
 - Coverage A: Statutory
 - Coverage B-each accident \$1,000,000;
 - Umbrella*: \$5,000,000 per occurrence and aggregate.Doka shall provide customer with a Certificate of Insurance upon request. Doka shall be added as an additional insured on Customer's Commercial General Liability, Automobile, and Excess insurance policies. Coverage afforded to Doka shall be as broad as the coverage afforded to the Named Insured and afforded on a primary and non-contributory basis with coverage under any policies maintained by Doka being excess to the coverage afforded to Doka as an additional insured on Customer's policies. Customer shall provide a waiver of subrogation in favor of Doka on all policies. Customer shall provide Doka with an Accord Form Certificate of Insurance and copies of endorsements upon request.
9. **Return of Products; Damaged, Destroyed and Missing Products.**
 - a. **Returns.** Customer shall provide seven (7) days written notice to Doka before the return of rented products. All arrangements to be made for the return of products are the responsibility of Customer. All products rented shall be returned to Doka in the same condition as delivered to Customer, except for normal wear and tear, and, in the case of forming panels, must be cleaned and ready for use. Products, including formwork panels pre-assembled by Doka, must be returned completely disassembled. Costs associated with sorting of commingled returns of rental products and assembly/disassembly of pre-assembled forms will be invoiced to the Customer at the Standard Shop Service billing rate in effect at the time of return.
 - b. **Damaged/Destroyed/Missing Products.** Damaged, destroyed, and/or missing products will be identified by Doka upon return and grading of such items. The cost of cleaning, repairing or replacing damaged, destroyed, or missing products will be charged to the Customer according to the then-current price list. Repairs and replacements shall be made in accordance with the applicable Doka quality standards in effect at the time of repair or replacement. No discounts will be offered on products not returned to Doka. Customer shall have thirty (30) days from receipt of a destroyed products invoice to pick up destroyed products. Freight charges for delivery of destroyed products to Customer shall be fully paid by Customer.
10. **Breach by Customer.** If Customer breaches the terms of this Agreement or becomes insolvent, or is placed in receivership, or if a petition in bankruptcy is filed by or against Customer, Doka may elect any or all of the following remedies: (i) declare the entire amount outstanding due and payable without further notice or demand to Customer; (ii) terminate this Agreement; (iii) demand assurance of performance; (iv) recover immediate possession of any leased Products (customer hereby waives any and all damages occasioned by such taking); (v) suspend its

performance under the Agreement or any other agreement with Customer without liability or penalty; (vi) notify any owner, general contractor, or bonding company of Customer's default; (vii) declare a cross default of any other agreement with Customer; (ix) apply any funds from other agreements to any deficiencies hereunder; and/or (x) exercise all other remedies available at law or under the Agreement.

11. **Termination by Doka.** Doka may terminate this Agreement for its convenience at any time. In the event of termination, Customer shall return all equipment within ten (10) business days of receiving written notice of termination from Doka.
12. **Claims.** Customer must give Doka written notice of any event giving rise to a backcharge or withholding or any other claim in which Doka may be held liable within forty-eight (48) hours of the occurrence of such event. If Customer fails to so notify Doka of the event giving rise to the Withholding or other claim, Customer waives all rights and claims associated with the event. Customer may not backcharge or withhold any monies due hereunder as a result of alleged delay in providing products or services, failure of products and services to meet the requirements of the plans and specifications, or any other reason unless Doka authorizes such backcharge or withholding in writing.
13. **Damages.** In no event shall either party be liable to the other party on any claim, regardless of legal theory, for any interruption of operations, loss of anticipated profits, delay, or for special, liquidated, incidental, contingent, or consequential damages.
14. **Miscellaneous.**
 - a. **Notices.** Notices to Doka provided for herein shall be in writing and effective only upon actual delivery to Doka's National Support Office at 251 Monroe Avenue, Kenilworth, NJ 07033.
 - b. **Code of Conduct.** Customer acknowledges that has reviewed and shall operate in compliance with the Umdasch Group's Code of Conduct available at: https://www.doka.com/web/media/files/Code-of-conduct_EN.pdf.
 - c. **Internal Conflicts in Agreement.** Should any conflicts occur between any other sections of this Agreement and these Terms and Conditions, these Terms and Conditions shall govern. If any term or provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason whatsoever, that term or provision shall be modified only to the extent necessary to be enforced, such term or provision shall be enforced to the maximum extent permitted by law, and the validity of the remainder of this Agreement shall not be adversely affected.
 - d. **Severability.** In the event any one or more of the provisions of this Agreement is held to be unenforceable or invalid under applicable law: (i) such unenforceability or invalidity shall not affect any other provision of this Agreement; (ii) this Agreement shall be construed as if the unenforceable or invalid provision had not been contained herein; and (iii) the parties shall negotiate in good faith to replace the unenforceable or invalid provision with one that has the effect nearest to that of the provision being replaced while being enforceable and valid under applicable law.
 - e. **Enforcement of Agreement.** In the event it becomes necessary for either party to engage attorneys to enforce compliance with any of the terms and conditions herein provided, the prevailing party shall be entitled to an award of all expenses and costs of litigation, including reasonable attorney's fees, incurred in connection with such enforcement. Any waiver by either party of a default or of enforcement of a Contract provision shall not preclude such party from subsequently demanding performance or enforcing any other terms of this Agreement.
 - f. **Price Escalation.**
 1. Unless otherwise stated in the Proposal, prices quoted are for fabrications taking place within thirty (30) days of the date of this Agreement. If fabrication does not occur within thirty (30) days of the date this Agreement, a surcharge will be applied if the cost to fabricate, including, but not limited to, the cost of raw materials and components, increases by more than two and one half percent (2.5%) between the date the Agreement and the fabrication date. In such an event, Customer shall pay a surcharge equal to the amount of the price increase. For example, if the cost of raw materials increases by six percent (6.0%) then Customer will pay a surcharge of six percent (6.0%).
 2. The price of formwork plywood and lumber is subject to price escalation as follows: If, during the performance of this agreement, the price of the material (e.g. plywood) increases, the price shall be

equitably adjusted by an amount necessary to cover any such price increases. For example, if the cost of material increases by six percent (6.0%) then Customer will pay a surcharge of six percent (6.0%). Where the delivery of material is delayed through no fault of Doka, as a result of the shortage or unavailability of materials, Doka shall not be liable for any additional costs or damages with such delay(s).

- g. **Product Markings.** Customer will not remove or cover identifying labels on Products.
- h. **Safety Anchorages/User Information.** Provisions built-in to formwork for attachment of fall protection products are designed to meet OSHA requirements. It is Customer's responsibility to verify the adequacy of safety harnesses, hooks, straps, etc. Under no circumstances should safety anchorages built-in to formwork be used for lifting the formwork. Doka shall not be liable on any claims arising out of or connected with the use of safety anchorages to lift formwork. User information must be followed for all products.
- i. **Assignment.** Neither party may assign this Agreement without the express, written consent of the other party.
- j. **Confidentiality.** Each party shall keep the existence of any and all terms and information referenced in this Agreement strictly confidential and shall not disclose to any third party any of the Confidential Information. The parties shall take reasonable measures to protect the secrecy of and avoid disclosure or use of the Confidential Information of the other party to prevent it from falling into the public domain or the possession of persons other than those persons authorized under the Agreement to have any such Confidential Information. The parties are authorized to disclose the Confidential Information of the other party solely to employees that are informed of its confidential nature and directed to treat the Confidential Information confidentially and not to use it other than in connection with the terms of the Agreement.
- k. **Media, Filming, and Photography.** Doka is authorized to film and photograph the jobsite, interior and exterior, during construction and post completion for the purposes of marketing and advertising purposes, publication in its customer newsletter, and publication in trade journals or other publications in Doka's discretion. Doka may select the equipment necessary for such filming and photography provided that Doka's activities do not impede the progress of construction work or create any safety issue on the site.
- l. **Force Majeure.** Neither part shall be liable for any failure or delay in performing its obligations under this Agreement if and to the extent that such failure or delay is caused by any event or circumstance beyond the reasonable control of such party including, but not limited to, an act of God, fire, explosion, flood, epidemic, pandemic, power failure, governmental actions, war or threat of war, acts of terrorism, national emergency, riot, civil disturbance, sabotage, or labor disputes and strikes (a "FM Event"). Should a FM Event occur, the party seeking relief from its contractual obligations shall promptly notify the other party of the FM Event and the anticipated duration of the delay. The party requesting relief shall use commercially reasonable efforts to recommence performance under this Agreement as soon as reasonably practicable after the FM Event ends. If the FM Event results in an increase in the price, Doka shall notify Customer of the price increase and the price shall be adjusted accordingly. If the FM Event relieves a party of its obligation to perform for a period of one hundred eighty (180) days or more, then the other may terminate this contract upon five days' written notice. Nothing herein shall terminate the Customer's obligation to make payment for work performed and comply with its return obligations for any rented material.
- m. **Tariffs.** The prices for the products specified in this Agreement account for customs duties and tariffs in place as of the date of this Agreement. If there is an increase in customs duties or tariffs or any new duties or tariffs levied on the products used in the manufacture of the products after the date of this Agreement, the specified prices of the Products shall be increased to the extent of the increased cost caused thereby.
- n. **Modification.** The terms of this Agreement may not be amended, altered, modified or rescinded except in writing signed by both parties. A waiver by either party of the requirements of this section with respect to the modification of any term or terms of this Agreement shall not preclude that party from asserting this provision with respect to any other term.
- o. **Complete Agreement.** This Agreement contains the complete and entire agreement between the parties. This agreement shall be construed in accordance with the laws of the State of New Jersey without regard to its conflict of laws provisions and each party hereby submits to jurisdiction and venue of state courts in Union County, New Jersey or federal court in Newark, New Jersey. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

