

# GENERAL TERMS AND CONDITIONS FOR RENTAL AGREEMENTS OF DOKA Philippines Inc.

## 1. General

- 1.1. These terms and conditions ("GTC") are an integral part of any and all rental agreements as well as agreements on related incidental services (such as planning and project planning services) between the customer as lessee ("Customer") and Doka as lessor (hereinafter referred to as "Lessor").
- 1.2. By accepting an offer of the Lessor and by sending an offer to the Lessor, the Customer expressly acknowledges the unrestricted application of these GTC and waives the application of its own general terms and conditions as well as its own terms and conditions of lease.
- 1.3. The Customer shall keep confidential the content of any agreements concluded or to be concluded between the Customer and the Lessor. The same shall apply to all information provided to the Customer by the Lessor. This obligation shall also apply without restriction for the period of 5 years after the termination of the agreement or, as the case may be, if contractual negotiations break down.
- 1.4. The data protection provisions available under [www.doka.com/en/home/dataprivacy/index](http://www.doka.com/en/home/dataprivacy/index) shall apply and shall be deemed an integral part of these GTC.
- 1.5. The Customer hereby expressly consents to its data being used exclusively by the Lessor and/or affiliated group companies for advertisement of similar products or services of the Lessor. This consent may be withdrawn at any time. Data will not be passed on to third parties.

## 2. Conclusion of the Agreement

- 2.1. Offers made by the Lessor shall not be binding unless expressly referred to as binding.
- 2.2. Orders placed by the Customer require acceptance in writing by the Lessor. In the absence of an order confirmation, the collection and/or delivery of the rental equipment shall be deemed a confirmation of agreement.
- 2.3. Any and all changes, deviations and amendments of or to these GTC shall require the express written confirmation of the Lessor.
- 2.4. Declarations made by employees of the Lessor or other persons working for the Lessor shall be effective only if confirmed by the Lessor in writing.
- 2.5. Information provided by the rental agreement on rental period and required quantities of rental equipment shall be binding.
- 2.6. If the Lessor agrees, the Customer may order incidental services from the Lessor, which will be charged separately. Such services may include, without limitation, engineering services (cycle planning during the entire construction phase, formwork execution planning, preparation of static calculations and structural analysis, advice in coordinating the formworks on site, etc.); transport and logistics services; pre-assembly and disassembly; cleaning of the rental equipment; repair of damage arising from improper handling and disposal. Incidental services shall be shown as separate items in the agreement documents and invoices and shall be subject to additional remuneration payable by the Customer.

## 3. Rent and Terms of Payment

- 3.1. The Lessor's prices are net prices, i.e. they do not include any tax, and are ex works, without packaging, transport and insurance.
- 3.2. The agreed rental fee shall be invoiced on the last day of each calendar month and be payable immediately without deductions at the principal office of the LESSOR through the issuance of post-dated checks corresponding to the monthly rental. The official receipt of the check in payment of the rent shall not produce the effect of payment until the amount is received in full and clear funds by the LESSOR.
- 3.3. Invoices can be sent electronically. Invoices shall be deemed to have been served as soon as they can be accessed or taken note of by the Customer under ordinary circumstances (e.g. e-mail receipt).
- 3.4. Bills of exchange shall only be accepted by the Lessor if agreed separately, and then only on account of payment, subject to receipt. Payment shall not be deemed effected before the day on which the Lessor can dispose of the amount credited to its account without any restrictions. All fees and charges, especially discount charges and promissory fees, shall be borne by the Customer. Should the Customer wish to receive invoices on paper, Doka reserves the right to charge a fee (such as a handling fee) provided this is admissible under applicable law. Where invoices are sent out via e-mail, such e-mails shall be sent to the e-mail address indicated by the Customer.
- 3.5. In the event of payment default, and irrespective of fault, the Customer shall undertake to pay interest on arrears of 12% p.a. The Customer shall further have to reimburse the Lessor for any and all costs of debt collection and legal action. Any further damage claims of the Lessor shall remain unaffected thereby.
- 3.6. In addition to paragraph 3.5 above, if the Customer is late with its payments, the rental equipment shall be returned to the Lessor immediately upon the Lessor's request. If the Customer fails to respond to this request immediately, the Lessor shall be entitled to collect the goods. Costs and risk of transporting the goods to the Lessor shall be borne by the Customer in any case. The return or collection of the goods shall in such case not be deemed a withdrawal from the agreement, unless expressly confirmed by Lessor in writing.
- 3.7. To the extent that the Customer was granted special terms such as discounts, it is agreed that such discounts shall cease to apply in the event of payment default or delayed payment and shall then be invoiced by the Lessor.

## 4. Title

- 4.1. The delivered goods shall remain the property of the Lessor for the entire term of the agreement.
- 4.2. If the Customer owns other Doka material also present on the building site, such material shall be sufficiently marked so it can be clearly distinguished from material rented from Lessor.
- 4.3. In instances where it is applicable, the Lessor's title in the rented material also relates to any products produced from and incorporating the goods delivered by the Lessor. If the goods are processed, combined or mixed with other goods, the Lessor acquires co-ownership in the products thus created proportionate to the value of the delivered goods as compared to the newly created item.
- 4.4. The Customer shall not be allowed to mix the rental equipment with objects of the same kind but procured from other sources, unless Clause 4.2 has been complied with. The Customer shall have to prove which of the mixed objects are objects procured from other sources owned by the Customer.
- 4.5. The Customer shall not be allowed to pledge the delivered goods to third parties by way of a lien or security interest or to dispose of the delivered goods for the benefit of third parties in any other way.
- 4.6. Any and all accounts receivable arising from a resale of the goods owned by the Lessor effected in violation of Clause 4.5 shall be assigned by the Customer to the Lessor already now on account of payment. In the event that the Customer violates Clause 4.5, Customer expressly assigns any and all of its rights to the Lessor to recover from third parties the goods under lease or the proceeds from the sale thereof. The Customer shall make corresponding notes in its books and outstanding items lists and shall, upon request by the Lessor, disclose to the Lessor the names and addresses of its purchasers as well as the existence and amount of any accounts receivable arising from the resale and to inform its purchasers of the assignment. Any profit realised by the Customer from the resale of the goods subject to retention of title shall be passed on to the Lessor without delay.
- 4.7. If the goods are claimed by third parties under a lien or any other right, the Customer shall assert the ownership title of the Lessor and inform the Lessor thereof in writing without delay. The Customer shall reimburse the Lessor for any and all costs incurred by the Lessor in connection with safeguarding its ownership title. The Customer shall provide the Lessor, upon request, with all documents required for safeguarding and enforcing such ownership title.
- 4.8. If the rental equipment is to be brought to a place other than the building site stated in the rental agreement, this shall require the Lessor's prior written approval. All costs incurred by the Lessor based on bringing the goods to a place other than the one stated in the rental agreement shall be borne by and invoiced to the Customer.

## 5. Delivery and Return Delivery

- 5.1. Any delivery periods and dates announced by the Lessor are approximate and always ex works. Should the delivery date or the delivery period be exceeded by more than two (2) weeks for reasons other than those referred to in Clause 5.3, the Customer may, after having granted a grace period of at least two (2) weeks and such period having expired without delivery, withdraw from the agreement by registered letter. Failure on the part of the Lessor to deliver part of the agreement shall entitle the Customer to withdraw only from the relevant part of the agreement. Any further claims of the Customer shall be excluded, unless the Lessor acted with wilful intent or blatantly gross negligence.
- 5.2. Delivery shall be deemed to have been made in time if the goods have been made available for dispatch by the Lessor in its plant by the delivery date or by the end of the agreed delivery period or – to the extent that shipping by the Lessor was agreed in writing – dispatch has been started by the above point in time.
- 5.3. Force majeure or any other unforeseen impediments in the plant of the Lessor and its suppliers, such as but not limited to labour problems (strikes, slowdown, etc.) and material shortage, which prevent delivery being made in time and which are not attributable to at least blatantly gross negligence

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- on the part of the Lessor, shall entitle the Lessor to extend the delivery period and/or postpone the delivery date in a reasonable extent. In such a case, the Customer shall have no right to performance of the agreement, damages and/or withdrawal.
- 5.4. The Customer shall accept delivery of the rented goods without delay, unless the goods show material defects. Any additional costs incurred by the Lessor based on delayed acceptance shall be borne by and invoiced to the Customer.
- 5.5. For the duration of the Customer's delay in paying invoiced amounts due, default interest and/or charges, the Lessor shall not be obliged to make any further deliveries.
- 5.6. The Customer shall accept partial deliveries made by the Lessor.
- 5.7. The rented formworks shall be returned at the Customer's cost and risk. The Customer must return the rental equipment completely, in its original technical state, without any damage exceeding normal wear and tear, cleaned and ready to use, disassembled, bundled according to dimensions, palletised and/or suitable for unloading by forklift. All rental equipment is to be returned to the delivering warehouse or a warehouse designated by the Lessor. In case of doubt, the Customer has to prove completeness of the returned rental equipment.
- 5.8. By signing the Customer's return delivery note, the Lessor merely confirms receipt of goods, but not their quantity and quality. Should there be discrepancies between the quantities stated in the Customer return delivery note and the quantities actually received by the Lessor at the Lessor's place, only the quantities actually received shall be deemed returned.
- 5.9. The rental fees account for normal wear and tear due to appropriate use, which implies compliance with the Lessor's relevant instructions for mounting and use. The Customer shall request such instructions from the Lessor, which shall provide the documents to the Customer upon request free of charge.
- 5.10. The rental equipment shall be returned in a clean condition corresponding to the Lessor's quality criteria applicable at the time of delivery. The Customer shall reimburse the Lessor for the cost of cleaning. The Lessor shall provide the Customer with the quality criteria free of charge upon request.
- 5.11. If damaged returned rental equipment can no longer be repaired (total loss) or if rental equipment is not returned (lost material), the Customer shall reimburse the Lessor based on the list prices applicable at the time of delivery, less 15% discount. Any claims of the Lessor for payment of rental fees accrued up to that point shall remain unaffected. The reimbursement does not give the Customer any ownership title to the damaged rental equipment, unless expressly agreed otherwise on a case-by-case basis. The Customer shall also bear the costs for disposal of unusable rental equipment. Furthermore, if the goods are damaged, the Lessor may elect to claim compensation either of the repair costs or of the loss in value.
6. Documents and software  
Any documents (such as planning and/or project documents) and software provided by the Lessor must not be used by the Customer for any purpose other than the one provided for in the agreement. The know-how contained in documents shall be provided to the Customer only for these purposes.
7. Passing of Risk and transport  
7.1. The risk of loss and damage of the goods shall pass on to the Customer as soon as the Lessor actually makes the goods available for dispatch. Unless shipping by the Lessor is agreed, the Customer shall ensure that the goods are collected without delay. Any packaging equipment shall also qualify as rented material.  
7.2. The shipping or transport of the goods shall in all cases be at the risk and cost of the Customer, even if the transport is carried out and/or organised by the Lessor.  
7.3. The Customer must give notice to the carrier of any damage having occurred during transport. Transport insurance shall only be taken out if expressly ordered and paid for by the Customer.
8. Warranty  
8.1. As a matter of principle, rented material is used material; the delivery of such material as such on a AS-IS, WHERE-IS basis does not constitute a defect, which is why the Customer does not have a right to claim delivery of new material, unless expressly agreed in writing between the contractual parties.  
8.2. Should the Customer refuse to accept the delivered goods contrary to its obligation under Clause 5.4., it shall ensure that the goods are properly unloaded, stored and held at the Lessor's disposal.  
8.3. Negotiations on notified defects shall not mean that the Lessor waives its right to claim that the notice of defect was given too late or not in sufficient detail.
9. Care and Diligence, Liability  
9.1. The Customer shall be solely responsible for selecting the rental equipment suitable for the intended purpose. The risk of using the rental equipment shall lie with the Customer.  
9.2. All load-bearing parts, particularly timber formworks beams, may only be loaded and used as provided for by the pertinent load tables and static values. The Customer shall request such tables and static values from the Lessor in due time before using the above material and shall use them at its own responsibility.  
9.3. The Customer must comply with the regulations contained in the instructions for mounting and use as well as all applicable statutory regulations on workplace safety as amended and the regulations on accident prevention issued by the professional associations, failing which any damage claims shall be excluded. The Customer shall be responsible for obtaining the Lessor's technical instructions required for the intended purpose at its own cost.  
9.4. Any damage to the rental equipment caused by improper use by the Customer shall be reimbursed as provided for in Clause 5.11. Impermissible actions include, without limitation, breaking through, cutting or drilling into the form lining of framed formwork and formwork elements. Repairs shall be carried out only by the Lessor because only the Lessor has the required special and technical expertise.  
9.5. The Customer shall ensure continuous monitoring of the rental equipment at its place of use and shall set aside any faulty parts.  
9.6. The Customer shall be liable for any damage caused by fire, water or weather, for the complete loss of the rental equipment and for theft by third parties. The Customer shall apply due care and diligence to protect the rental equipment from theft. In the event of theft, the Customer must immediately inform the Lessor thereof in writing and to report it to the competent authority. A copy of the report filed with the police shall be sent to the Lessor. Customer shall insure rental equipment for their full insurable value with a first-class insurer against loss and damage and any other risks for products of that kind during entire term of rental agreement. Such insurance shall be in the name of the Customer with the interest of Lessor noted thereon. Such insurance shall be made on Customer's sole cost.  
9.7. The Lessor shall only be liable to the extent that the Customer can prove blatantly gross negligence or wilful intent on the Lessor's part. Any further liability shall be excluded just as compensation for consequential damage, purely financial loss and loss or damage incurred due to claims raised by third parties against the Customer. To the extent permissible under mandatory law, the Lessor shall not be liable for any loss of or damage to data. Any claims for damages shall be asserted in court by the Customer within six months from obtaining knowledge of damage and the party who caused the damage, but no later than two years after delivery by the Lessor.  
9.8. The Lessor does not assume any liability for compliance with the provisions of the applicable laws on safety standards. Implementation shall expressly be the responsibility of the Customer, in particular with regard to assembly instructions, risk analyses and other safety-relevant steps.  
9.9. The Lessor shall be liable for fault on the part of its vicarious agents only to the extent that they are incorporated into the operational organisation of the Lessor. Any liability of the Lessor shall therefore be excluded particularly for fault on the part of its suppliers and shippers.  
9.10. Any liability on the part of the Lessor or its suppliers and subcontractors for any damage to property incurred by an entrepreneur or any other third party shall be excluded.  
9.11. The Customer shall ensure that anyone who purchases goods from the Customer shall be bound by the limitations of liability contained herein and shall be obliged to bind anyone who purchases the goods from them to the same limitations.  
9.12. If the goods are produced based on plans, documents or instructions provided by the Customer, the Customer shall be exclusively responsible for any violation of industrial property rights of third parties and shall indemnify the Lessor and hold the Lessor harmless should any claims be brought against the Lessor for any violation of such rights.  
9.13. The Customer acknowledges that, given the current state of technology, it is impossible to produce entirely flawless software programs. The Lessor therefore does not warrant that the software works without disruption or free from defects or that defects can be remedied completely.

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- 9.14. Neither does the Lessor guarantee the completeness and/or correctness of information provided on third-party products. The Customer shall be responsible for obtaining pertinent information from the relevant manufacturer. Any employment of the rental equipment using parts made by the Customer itself or by other manufacturers shall be at the Customer's risk only. Notwithstanding any further rights or obligations under the rental agreement, the Lessor does not assume any liability for any assembly instructions, risk analyses and other safety-relevant data or information in the plans of the Customer which are prepared by the Customer or by third parties.
10. Ancillary Services
- 10.1. If pre-assembly of special formworks was agreed to be carried out by the Lessor, the Lessor shall submit the plans for pre-assembly to the Customer for examination in due time before starting pre-assembly. The plans for pre-assembly prepared by the Lessor shall conform to the generally acknowledged state of the art. The Customer shall, in due time, examine the plans for pre-assembly as to their correctness and shall return them to the Lessor immediately after having examined them and shall countersign them to indicate approval. Required changes of the plans for pre-assembly shall be immediately announced to the Lessor in writing. Otherwise, the plans shall be deemed approved.
- 10.2. After the Lessor has informed the Customer of completion of pre-assembly, the Customer shall acceptance-test the pre-assembled formwork at the place of pre-assembly without delay. An acceptance certificate shall be prepared and signed by representatives of both contractual parties. If the Customer does not show up for acceptance on the date specified, pre-assembly shall be deemed accepted.
- 10.3. The costs for agreed assembly and disassembly work carried out by the Lessor shall be borne by the Customer. The same shall apply to any costs arising for transport or the use of machines (cranes, etc.), as well as any related travel expenses incurred by the Lessor.
- 10.4. If pre-assembly work is interrupted due to structural circumstances, influences arising from the organisation of the building site or otherwise at the behest of the Customer, the Customer shall bear the additional expenses incurred by the Lessor. The same shall apply analogously to additional expenses exceeding the scope of the order placed originally, in particular in the event of changes in the assembly work and/or services as well as any other unforeseeable difficulties in the Customer's sphere of responsibility.
11. Technical Instructions
- 11.1. Technical advice provided by employees of the Lessor shall be limited to explanations of the Lessor's written instructions, and liability on the part of the Lessor for any information provided by its employees exceeding this scope shall be excluded. Only the competent body at the Lessor's headquarters is authorised to provide information exceeding the scope of mere explanations of the Lessor's written instructions, in particular relating to solutions for specific problems. The Customer shall obtain such information exclusively from such body.
12. Rental Period
- 12.1. The minimum rental period shall be one (1) month, unless otherwise contractually agreed.
- 12.2. The lease relationship shall begin on the day on which the Lessor makes the goods available for collection or use or – to the extent that shipping by the Lessor was agreed – on the day on which dispatch was started.
- 12.3. The lease relationship shall end on the day the goods are returned to the contractually agreed warehouse of the Lessor pursuant to Clause 5.7. The day on which the goods are collected and the day on which the goods are returned shall each count as one full rental day.
- 12.4. The risk that the Customer may be unable to employ and use rented material due to bad weather or other outside influences, shall be borne by the Customer.
- 12.5. The obligation to pay a rental fee shall cease once the rental equipment is returned, at the earliest, however, at the end of the contractually agreed rental period.
13. Withdrawal
- 13.1. The contractual parties shall be entitled to terminate the rental agreement with immediate effect by way of a registered letter for good cause (such as violation of material contract terms, violation of Clause 9.5., default in payment despite a grace period of at least 14 days having been granted). In these cases, the Lessor may demand that the rental equipment be returned and shall be entitled to collect the rental equipment from the building site. The Customer shall immediately inform the Lessor of any attempts to attach a lien to the rental equipment and shall at the same time take all steps required to protect the Lessor's ownership title. The costs arising for safeguarding the Lessor's rights in the rental equipment shall be borne by the Customer. After termination of the agreement, the Customer shall not be allowed to continue using the rental equipment. Any rights on the part of any insolvency administrator shall remain unaffected.
- 13.2. The Lessor may also withdraw from the agreement if it cannot be reasonably expected, even if only temporarily, to fulfil the agreement.
14. Return of the Goods
- 14.1. In the event of a withdrawal from the agreement, any and all rental equipment shall be returned to the Lessor within 14 days and installed software (such as programs) shall be deleted. If the Customer fails to fulfill this obligation immediately, the Lessor shall be entitled to collect the goods at the cost and risk of the Customer.
- 14.2. If, contrary to the provisions of Clause 4.2, it is impossible to clearly distinguish the goods to be returned from other goods, Doka shall be entitled to select goods. In such a case, the Customer shall indemnify the Lessor and hold the Lessor harmless in relation to any third-party claims.
15. No Offsetting
- The Customer shall not be entitled to offset any claims it may have against the Lessor with any payments it owes to the Lessor.
16. Severability
- Should, for whatever reason, one or several provisions of these GTC or of any agreement concluded between the Customer and the Lessor be invalid or unenforceable, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by the provision coming closest to the intended purpose.
17. Place of Performance and Jurisdiction
- 17.1. The exclusive place of performance for all obligations arising from or in connection with contractual relationships between the Seller and the Customer and all disputes between the Customer and the Seller, including the question of the valid realization of the agreement as well as its preliminary and subsequent contractual effects, shall be settled by the court having jurisdiction over the subject matter in the Philippines. Notwithstanding the foregoing, the Seller may, at its sole option, submit any dispute to arbitration as described in Clause 17.2 below.
- 17.2. If the Lessor decides to submit a dispute to arbitration, the Customer hereby agrees to such a submission and furthermore agrees that all disputes or claims arising out of or in connection with this agreement or related to its violation, termination or nullity shall be settled by arbitration in accordance with Construction Industry Arbitration Commission Revised Rules of Procedure Governing Construction Arbitration in force at the time of the commencement of the arbitration. The number of arbitrators shall be three (3), the place of arbitration shall be Metro Manila and the language to be used in the arbitral proceedings shall be English. Expenses and other fees for arbitration shall be shouldered by the party held liable or, in the absence of such determination, equally among the parties. The law to be applied is Philippine law excluding the rules regarding conflict of laws.
18. Applicable Law and Interpretation
- 18.1. Legal disputes between the Customer and the Seller including the question of the valid conclusion of the agreement and the preliminary and subsequent contractual effects are subject exclusively to Philippine law, excluding any rules regarding conflict of law. Any sales business shall be governed by the General Terms for Sale and Delivery of the Lessor as amended from time to time. Furthermore, the **General Terms and Conditions of Sale and Delivery**, the **General Terms and Conditions of Doka on the use of Doka Planning Software** as well as the **General Terms and Conditions for Concremote** as amended from time to time shall apply.
- 18.2. In case of any discrepancies between a framework/rental agreement and these GTC, the more specific provisions of the framework/rental agreement shall prevail.
19. Force Majeure
- 19.1. Neither party shall be deemed to be in breach of any obligation of this Agreement (except any obligation of payment) resulting from acts or events beyond that party reasonable control, including but not limited to any act of God, outbreak, epidemic or pandemic of any kind or communicable or

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virulent disease/infection and any actions taken by any government or public authorities in response to any of the foregoing, any acts of war or terrorism, hostilities (war be declared or not), invasion, act of foreign enemies, strikes, lock out, disorder, any shortage of supply or labour, breakdowns or malfunctions, loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, civil unrest, riots, revolution, rebellion, quarantine of any kind, natural disaster, flood, fire, embargo, boycott, insurrection, explosion, shortage of gas, fuel or electricity, hacker attack, piracy, interruption of transportation, governmental actions and injunctions, change of law, unavoidable accident, failure of any supplier, contractors or subcontractors.

- 19.2. If a force majeure event occurs, the party affected shall be entitled to postpone the performance (except any obligation of payment) that is required to render to the extent and for the period of time that such party is prevented by the event of force majeure. Upon occurrence of such an event, the affected party will make its utmost efforts to notify the other party thereof as soon as practicable.
- 19.3. If the inability to perform of the affected party shall continue longer than 6 months, the other party may terminate the Agreement by notice with immediate effect. Such termination will not relieve the party from its obligation to pay any amounts accrued or otherwise owed for products or services rendered until termination.

### 20. Waiver

- 20.1. As far as it is possible under mandatory law, the Customer and Seller shall waive the right to appeal against these terms of business as well as against agreements concluded between them and/or the right to demand the cancellation or amendment of the same. In particular an appeal on the grounds of a mistake or laesio enormis is excluded.

### 21. Purchase of Rented Goods

In the event that the Customer buys the rented goods, its payments shall be used to cover any outstanding rental fees, interests and any other applicable charges for the relevant goods first, irrespective of any payment reference indicating a different purpose. The goods shall become the property of the Customer only once all unpaid rental fees, interest and the purchase price have been paid.

(Version of March 2020)