

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF DOKA Philippines Inc.

1. General
 - 1.1. These terms and conditions are an integral part of all agreements (e.g. sales, delivery as well as contracts regarding planning and projection services) between the customer ("Customer") and Doka as seller or contractor of the work (the "Seller").
 - 1.2. Upon acceptance of an offer from the Seller or upon placing an order as well as by sending an offer to the Seller the Customer shall expressly recognise the unrestricted validity of these terms of business and shall relinquish in full the application of his general terms of business or conditions of purchase.
 - 1.3. The Customer shall be obliged to maintain confidentiality in respect of the content of the agreements concluded or which are to be concluded between the Customer and the Seller. This shall also apply to all information provided for the Customer by the Seller. 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 <https://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 Seller and/or affiliated group companies for advertisement of similar products or services of the Seller. This consent may be withdrawn at any time.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 from the Seller are not binding insofar as they are not expressly designated as binding.
 - 2.2. Orders from the Customer must be accepted in writing by the Seller. In the absence of an order confirmation, the collection and/or delivery of the equipment shall be deemed a confirmation of agreement.
 - 2.3. All amendments, changes and additions from or to these terms of business require the express written confirmation of the Seller.
 - 2.4. Declarations which are submitted by employees of the Seller or other persons employed by the latter are only valid insofar as they are confirmed by the Seller in writing.
3. Price and Terms of Payment
 - 3.1. The Seller's prices are net prices, i.e. they do not include any taxes and are quoted ex works, excluding packaging, carriage, insurance and customs duties in case of export.
 - 3.2. The total purchase price is due upon receipt of the invoice without deduction irrespective of when the goods are received or checked.
 - 3.3. Invoices will be sent electronically. Invoices shall be deemed to have been served as soon as they can be accessed or taken note of by the Buyer under ordinary circumstances (e.g. e-mail receipt).
 - 3.4. Bills of exchange shall only be accepted by the Seller if agreed separately, and then only on account of payment, subject to receipt. Payment shall only be deemed to have been effected upon the day on which the Seller can finally make use of the funds on his account. All fees and charges, especially discount charges and promissory fees shall be borne by the Customer.
 - 3.5. In the event of payment default, and irrespective of blame, the Customer shall undertake to pay interest on arrears of 12% p.a. from invoice date. The Customer shall also undertake to reimburse the Seller for all costs of the debt collection and legal action. Compensation claims of the Seller over and above this shall be unaffected.
 - 3.6. 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 default and shall then be invoiced by the Seller. In case of default of installment payments, the entire outstanding owed to Doka will become payable immediately.
4. Reservation of Title
 - 4.1. All deliveries by the Seller shall be effected with reservation of title. The goods supplied shall remain the property of the Seller until the purchase price and extra charges are paid in full. Goods are deemed to include all tangible and intangible goods, especially also documents, planning services and software (e.g. programmes). 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 under reservation of title.
 - 4.2. The reservation of title shall also extend to products arising from the processing of goods supplied by the Seller. If the goods are processed, combined or mixed, the Seller shall acquire joint ownership of the ensuing products in proportion of the value of the delivered product to the value of the new item.
 - 4.3. The Customer shall not be allowed to mix the equipment with objects of the same kind but procured from other sources, unless clause 4.1 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.
 - 4.4. The Customer is forbidden to order the goods supplied under reservation of title for third parties as collateral or as security by transfer of ownership or dispose of them in this or in any other way in favour of third parties. The resale of the goods subject to reservation of title is only permitted with the express written consent of the Seller.
 - 4.5. All accounts receivable arising from any resale of the goods under reservation of title in respect of the Seller effected contrary to Clause 4.4 or with the Seller's consent are hereby assigned by the Customer to the Seller in payment. The Customer shall make the necessary notes in his books and outstanding items lists and is obliged upon the request of the Seller to notify the latter of names and addresses of his customers as well as the balance and amount of the accounts receivable arising from the resale and to advise his customers of the assignment of the claim. Profits realised by the Customer from the resale of the goods subject to reservation of title shall be passed on to the Seller without delay.
 - 4.6. In the event that the goods subject to reservation of title are pledged or otherwise used by third parties the Customer shall be obliged to assert the right of ownership of the Seller and to notify the Seller without delay in writing. The Customer shall reimburse the Seller for all costs, which arise in connection with safeguarding his right of ownership. The Customer shall provide the Seller upon the latter's request with all documents necessary for safeguarding and implementing the right of ownership.
 - 4.7. In the event of payment default of the Customer the goods subject to reservation of title shall be returned to the Seller immediately upon request from the same. Insofar as the Customer does not comply with this request immediately, the Seller shall be entitled to collect the goods subject to reservation of title. In any case the Customer shall bear the costs and risk of transportation of the goods to the Seller. The return or collection of the goods in this respect does not imply withdrawal from the agreement. The Seller is entitled to sell the recovered goods elsewhere and to offset the profits against his claims on the Customer. The Customer shall be advised of the intended resale and the amount of the sale price and has the option of identifying other customers to the Seller within four weeks who would acquire the goods under the terms announced or under terms more favourable to the Seller.
5. Delivery
 - 5.1. Delivery periods and dates announced by the Seller are approximate and are always ex works Seller's yard, EXW Incoterms 2020. Should the delivery date or delivery period be delayed by more than two weeks for reasons other than those mentioned under Clause 5.3, the Customer can withdraw from the agreement after setting an additional deadline without success of at least two weeks by registered letter. A partial default by the Seller shall only entitle the Customer to a partial withdrawal accordingly from the agreement. Additional claims of the Customer are excluded unless the Seller acted with willful intent or blatantly gross negligence.
 - 5.2. The delivery is on time if the goods are made available for dispatch as at the delivery date or by the end of the agreed delivery period by the Seller at his works or, insofar as dispatch by the Seller is agreed in writing, if dispatch has commenced by this date.
 - 5.3. Force majeure or any other unforeseen impediments in the plant of the Seller and its suppliers, such as but not limited to labor problems e.g. strikes, slowdown etc. and material shortage, which prevent delivery on time or according to schedule and which are not due to at least blatantly gross negligence on the part of the Seller, shall entitle the Seller to an appropriate extension of the delivery period or postponement of the delivery date. The Customer shall have no rights of performance, compensation and/or withdrawal in this case.
 - 5.4. The Customer shall accept delivery of the goods without delay, unless they show material defects. Any additional costs incurred by the Seller based on delayed acceptance shall be borne by and invoiced to the Customer.
 - 5.5. For the duration of the delay of the Customer in paying invoiced amounts due, interest on arrears and/or charges, the Seller shall not be obliged to make any further deliveries.
 - 5.6. The Customer shall be obliged to accept partial deliveries from the Seller.

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6. Documents and Software

The Customer is not entitled to use documents provided by the Seller (e.g. planning and/or project documentation) and software for any purposes other than the purposes envisaged in the agreement. The know-how included in the documents shall be supplied to the Customer only for these purposes.

7. Bearing the Risk and Dispatch

- 7.1. The risk of loss and damage to the goods shall pass to the Customer as soon as the goods are actually made available by the Seller for dispatch. Insofar as dispatch by the Seller has not been agreed, the Customer shall ensure immediate collection of the goods.
- 7.2. The dispatch or carriage of the goods shall be effected in all cases at the risk and costs of the Customer, even if the transportation is effected or organised by the Seller or if carriage is paid or carriage without obligation is agreed.
- 7.3. The Customer shall observe the requirement to give notice of defects in respect of the carrier for damage in transit. Transport insurance shall only be arranged if the Customer expressly orders this and assumes the costs.

8. Warranty and Liability

- 8.1. The Customer is obliged to inspect the goods for proper quality without delay and to notify the Seller of any defects immediately in writing, within eight days at the latest upon delivery of the goods/performance and before processing or using them, with an accurate description of the faults. This shall also apply for - in any respect - insufficient deliveries. The Seller must be notified in any event of defects detected at a later time at the latest within the same 8 days' period. In case defects are not notified in time, the goods/performance shall be deemed approved even with respect to such defects. Notwithstanding this notification duty, any warranty claims must be asserted by court action within six months of delivery of the goods/performance, otherwise such claims will be excluded. Recourse to the Seller of the Customer due to warranty claims of its customers beyond mentioned period shall be excluded. The Customer shall also exclude the right to recourse with respect to its respective purchasers, as far as permitted by compulsory law.
- 8.2. Notification of the defects shall not release the Customer from his payment obligation. It is a condition of the warranty of the Seller that the Customer has met all obligations, especially his payment obligations and has specified and advised the defects on time.
- 8.3. The warranty period is six months from delivery of goods. The Seller is entitled to rectify defects and/or damages at his option by replacement or improvement within a reasonable period. As long as the Seller makes use of this right the Customer has no right of cancellation, price reduction or monetary compensation.
- 8.4. Further processing or editing of the goods by the Customer or by third parties (other than the Seller) and/or use of the goods by third parties to whom the Customer has made available the goods shall lead to warranty being excluded.
- 8.5. 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 Seller's disposal.
- 8.6. In negotiations about notices of defects the Seller does not waive the right to claim that the defect was notified late or not in sufficient detail.
- 8.7. The Seller shall only be liable if the Customer is able to prove that the Seller acted with blatantly gross negligence or willful intent. Any other liability is excluded as is compensation for consequential loss, damage to property and losses based on the claims of third parties against the Customer. The Seller is not liable either insofar as permissible under mandatory law, for loss of or damage to data. The Customer shall assert any claims for damages in court within six months of knowledge of the damage and the party who caused the damage but not later than within two years of delivery by the Seller.
- 8.8. The Seller is only liable for the faults of his vicarious agents insofar as the latter are incorporated into the operational organization of the Seller. Liability of the Seller is therefore excluded also especially for the fault of his suppliers or of carriers.
- 8.9. Insofar as the product liability law is applicable, the liability of the Seller or of his suppliers and subcontractors is excluded for damage to property which a business owner suffers.
- 8.10. The Customer shall undertake to bind his customers to the limitation of liability of these terms of business in full who shall also undertake to pass on this obligation.
- 8.11. If the goods are produced in accordance with plans, documents or instructions of the Customer, the Customer shall be exclusively liable for the infringement of industrial property rights of third parties and shall indemnify the Seller insofar as claims are made against him on the basis of the infringement of such industrial property rights.
- 8.12. The Seller shall not guarantee the completeness and/or accuracy of information on the products of third parties. It is the responsibility of the Customer to seek information accordingly from the respective manufacturer.

9. Technical Instructions

- 9.1. The goods shall be used in accordance with the technical instructions (e.g. user information, formwork drawings, etc) of the Seller or shall otherwise be excluded from warranty and compensation claims.
- 9.2. It is the responsibility of the Customer to obtain the Seller's technical instructions necessary for the former's purposes at his own expense.
- 9.3. Technical advice from the employees of the Seller is restricted to an explanation of the written instructions of the Seller; the Seller shall not be liable for information from his employees over and above this. Only the department responsible at the registered offices of the Seller is authorized to give information beyond an explanation of the written instructions of the Seller, in particular appropriate solutions for specific applications. The Customer shall only obtain such information from this department.

10. Cancellation

- 10.1. The contractual parties are entitled if there are important reasons (e.g. infringement of material terms and conditions of the agreement, payment arrears despite an additional period of time of at least 14 days), to cancel the agreement by registered letter.
- 10.2. The Seller may also withdraw from the agreement if it cannot be reasonably expected, even if only temporarily, to fulfil the agreement.

11. Return of the Goods

- 11.1. Goods already supplied by the Seller (Clause 4.1) and any copies shall be returned to the Seller within 14 days of the cancellation of the agreement, installed software (e.g. programmes) shall be deleted. Insofar as the Customer does not comply with this obligation, the Seller is entitled to collect the goods at the expense and risk of the Customer and delete the software himself.
- 11.2. If, contrary to the provisions of Clause 4.2, the goods to be returned are not clearly identifiable from others, the Seller is entitled to select an item. The Customer shall indemnify the Seller in this respect from any claims of third parties.

12. Exclusion of Set-off

The Customer is not entitled to offset any claims in respect of the Seller against those of the Seller.

13. Severability Clause

If, for any reason, one or more of the provisions of these terms of business or of an agreement between the Customer and the Seller is invalid or unenforceable, the validity of the remaining provisions shall be hereby unaffected. In place of the invalid or unenforceable provision there shall be a provision which is closest to the intended purpose.

14. Place of Performance and Jurisdiction

- 14.1. 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 14.2 below.
- 14.2. If the Seller 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.

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15. Applicable Law and Interpretation

- 15.1. 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 rental business shall be governed by the **General Terms for Rental Agreements** of the Seller as amended from time to time. Furthermore the **General Terms and Conditions of Doka on the use of Doka Planning Software**, the **General Terms and Conditions for Concremote** as amended from time to time shall apply.
- 15.2. In case of any discrepancies between a framework/sales agreement and these GTC, the more specific provisions of the framework/sales agreement shall prevail.

16. Force Majeure

- 16.1. 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 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, labour 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.
- 16.2. 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.
- 16.3. 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.

17. Waiver

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.

(Version of March 2020)