

1 Definitions

In these conditions, unless the context requires otherwise:

- 1.1 'Customer' means the person who buys or agrees to buy and/or hire the goods from the Seller;
- 1.2 'Conditions' means the terms and conditions of trading set out in this document;
- 1.3 'Delivery Date' means the date specified by the Seller when the goods are to be delivered;
- 1.4 'Goods' means the articles which the Customer agrees to buy and/or hire from the Seller;
- 1.5 'Price' means the price for the Goods excluding carriage, packing, insurance and VAT; and
- 1.6 'Seller' means DOKA UK Formwork Technologies Limited of Monchelsea Farm, Heath Road, Boughton Monchelsea, Maidstone, Kent ME17 4JD

2 Conditions applicable

- 2.1 These Conditions shall apply to all contracts for the sale and/or hire of Goods by the Seller to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Customer to purchase or hire Goods pursuant to these Conditions. Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Customer's acceptance of these Conditions.
- 2.3 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3 Price and payment

- 3.1 The Price shall be the price referred to in the Seller's Quotation and/or other documentation. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.
- 3.2 Payment of the Price and VAT shall be due 30 days from date of invoice. Time for payment shall be of the essence. Interest on overdue invoices shall accrue according to the "Late payment of commercial debt act 1998".
- 3.3 The Seller shall be entitled to appropriate payment made by the Customer in respect of any goods in settlement of such invoices or accounts in respect of such goods as the Seller may in its absolute discretion think fit, notwithstanding any purpose appropriation to the contrary by the Customer.

4 The Goods

The quantity and description of the Goods shall be as set out in the Seller's quotation.

5 Technical Instructions

The use of the Goods is governed by technical instructions issued by the Seller. It is the Customer's responsibility to obtain a copy of the technical instructions from the Seller. Any technical consultation provided by the Seller's staff is limited to an explanation of the technical instructions issued by the Seller.

6 Warranties and liability

- 6.1 The Seller warrants that the Goods supplied will at the time of delivery correspond to the description given by the Seller.
- 6.2 The Seller warrants to the Customer that all of the Goods supplied hereunder will for a fixed period of six months from the date of the delivery be of satisfactory quality and fit for the purpose for which they were supplied **PROVIDED ALWAYS** that 6.2 shall not apply where: the Goods have been altered in any way or have been subjected to misuse or unauthorised repair; or the Goods have been improperly installed, erected or connected; the Customer has failed to observe any technical instructions issued by the Seller including without limitation any maintenance requirements relating to the Goods; the Customer has failed to notify the Seller of any defect of suspected defect within the time limit stipulated in condition 6.3; the total price for the Goods has not been paid by the due date. Any repaired or replacement goods will be guarantee on these terms for the unexpired term of the six month period.
- 6.3 In the event of a breach of 6.2 the Seller at their own option, and subject to 10.1, within a reasonable period of time repair, replace, repay the price if paid or issue a credit note **PROVIDED ALWAYS** that where any of the goods are alleged to be defective the Customer notifies the Seller within 48 hours of discovery of the defect and promptly makes available the goods for inspection and, if so required, promptly returns the Goods affected to the Seller's address, at the Buyer's expense and risk.
- 6.4 Save as expressly referred to above, and except where the Customer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12 as amended and/or the Unfair Terms in Consumer Contracts Regulations 1999 Regulation 3(1)), all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.
- 6.5 The Customer shall indemnify defend and hold harmless the Seller in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred (but excluding any liability to the extent that it is based on any breach of the Seller's warranty in 6.2) as a result of or in connection with any claim made against the Seller by a third party in respect of any matter caused by the Customer or for which liability has been assumed by the Customer.

7 Delivery of the Goods

- 7.1 The Seller will endeavour to deliver the goods within the time agreed ~~however time of delivery is not of the essence. Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Customer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 3 months of the Delivery Date.~~
- 7.2 Unless otherwise agreed the Customer will make arrangements for the carriage of the Goods. The Seller will be deemed to have delivered the Goods if it has made the Goods ready for despatch within the agreed time period. Where the Seller makes arrangements for the carriage of the Goods, delivery will be deemed to have taken place if a carrier collects the Goods prior to the expiry of the agreed time period. In such circumstances the Customer shall be responsible for the unloading of the Goods.
- 7.3 Delivery of the Goods will be made ~~ex Doka's works (Incoterms 1990) and the contract price is calculated on that basis. Accordingly the Customer shall in addition to the price be liable for paying the full costs of transport and insurance. Where the Customer has agreed to make advance payment for the Goods, delivery shall be conditional upon full payment being made to the Seller.~~
- 7.4 Where the Goods are carried by the Seller's own transport, or by a carrier on behalf of the Seller, and there has been damage to or loss of the Goods, the Customer must notify the Seller any loss or damage to the Goods within 7 days of receipt and the Goods shall be held for inspection to enable a claim to be made on the carrier. The Customer shall immediately notify the Seller if the Goods are not received within 14 days of the date of the invoice. Any claim for damaged Goods or shortages or non-delivery shall be notified to the carriers by the Customer in the manner and within the appropriate time limit prescribed by the carriers' terms and conditions. In the event of the Customer's failure to comply with the terms of 7.4, he shall be deemed to have accepted the Goods and any claim by the Customer will be waived and barred.
- 7.5 Where the Customer rejects the Goods pursuant to 7.4 he shall nevertheless be obliged to unload and store the Goods.

8 Acceptance of the Goods

The Customer shall be deemed to have accepted the Goods 48 hours after delivery to the Customer. After acceptance the Customer shall not be entitled to reject Goods which are not in accordance with the contract.

9 Title and risk

- 9.1 Risk shall pass to the Customer at the point of transportation, be it by a carrier or by the Seller.
- 9.2 Notwithstanding delivery to the buyer, the Seller shall be legally and beneficially entitled to the ownership of the goods until payment of all debts owed by the buyer to the company. Title will not pass to the Customer until all such payments have been received by the Seller. Until such payment, and subject to the following provisions, the buyer holds the goods as bailee of the Seller and owes to the Seller the normal fiduciary obligations of a bailee by way of custody in respect of the goods. The Customer will not be entitled to sell the Goods or to convert or incorporate the Goods into any other goods without the express written consent of the Seller, and the Customer must store the Goods separately and clearly marked as the Seller's property.
- 9.3 The Customer shall be responsible for the costs and expenses incurred by the Seller in locating, repossessing, recovering or restoring the Goods.
- 9.4 The Customer hereby grants to the Seller, its Agents and employees and irrevocable licence to enter onto any premises where the Goods are stored or sited in order to repossess them or inspect them at any time. The Customer shall ensure that the owner of the premises where the Goods are located permits the Seller to have access to the premises to inspect and test and remove the Goods and that the owner acknowledges that it has no ownership or other rights to the Goods.

10 Liquidated Damages

- 10.1 In the event that the Seller is held to be in breach of its obligations under this agreement, due to negligence, the parties agree that the Seller shall pay to the Customer as and by way of agreed liquidated damages an amount not to exceed the price of the goods supplied up to the date of the breach. The Seller will not be held liable for any consequential losses suffered by the Customer as a result of any breach of the Seller's warranties or obligations, whether reasonably foreseeable or otherwise.
- 10.2 In the event that the Customer declines to accept the Goods in breach of this contract the Customer shall pay to the Seller as and by way of agreed liquidated damages an amount equal to the price of the Goods less the net proceeds received by the Seller on reselling the Goods after deducting the costs and expenses of resale.

11 Set-off and counterclaim: seller's clause

The Customer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set off or counterclaim which the Customer may have or allege to have or for any reason whatever.

12 Insolvency or other default of buyer

If the Customer fails to make payment for the Goods in accordance with this contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Customer's goods or if the Customer offers to make any arrangement with its creditors or if any bankruptcy petition is presented against the Customer or the Customer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Customer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Customer's business or assets or if the Customer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have: suspend all future deliveries of Goods to the Customer and/or terminate the contract without liability upon its part; and/or exercise any of its rights pursuant to clause 9

13 Export

Where Goods are supplied to the Customer outside the United Kingdom The Uniform Law on International Sales Act 1967 shall not apply. Payment will be in Pounds Sterling. The Customer will establish and maintain in favour of the Seller an irrevocable and confirmed letter of credit in English with a UK clearing bank payable on drafts drawn at sight upon presentation to the bank by the Seller of a certified copy of the Seller's invoice. Such letter of credit shall be established at least 30 days prior to anticipated shipment date of the Goods and shall cover the full price of the Goods (including applicable taxes) and such letter of credit shall be divisible. All bank charges and other expenses in relation to the letter of credit shall be for the Customer's account. The Goods will be sold F.O.B or C.I.F (Incoterms 1990) at the option of the Seller and the Seller shall be under no obligation to give the Customer notice as specified in Section 32(3) of the Sale of Goods Act 1979.

14 Terms of Hire

In the case of hire of the Goods:-

- 14.1 The Customer is responsible for the proper handling, dismantling, storage, maintenance and cleaning of the Goods. Loss or damage howsoever caused (excluding fair wear and tear) to the hired Goods will, without prejudice to any other remedies the Buyer may have, render the Customer liable to a charge, details of which are available upon request. Damages shall include wear and tear going beyond normal propose use such as breakages, cuts or drillings.
- 14.2 The Goods must be delivered to the Seller bundled, palletted and cleaned. Failure to do so shall render the Customer liable to a charge.
- 14.3 If the Customer mixes the hired goods with the Customer's own equipment, the Seller's decision as to subsequent separation and identification of the Goods shall be final.
- 14.4 The Customer shall not part with possession or otherwise charge, pledge or assign the Goods to any third party. Breach of this term shall render the Customer liable to a charge equivalent to the list price of the Goods.
- 14.5 The minimum period of hire is 4 weeks (twenty-eight days). The Hire shall commence on the day the Goods leave the Seller's storage facility, and shall cease upon the return of the Goods by the Customer.
- 14.6 The Customer shall pay to the Seller during the Rental period the hire charges in the amounts and at the intervals specified by the Seller. Payment shall be made in accordance with clause 3. Provided that the Customer shall not be in default of its obligations hereunder, the Customer shall be entitled to terminate the hire on giving the Seller not less than 3 days notice in writing to that effect and by paying such sums as with payments previously made amounting to the total Hire Charge and by returning the Goods (at the Customer's expense) to the Seller and in good repair and condition. If the Customer (i) fails to pay any Hire Charges or other sums due in full within 14 days after the sums have become due or (ii) the Seller has good reason to doubt the Customer's credit worthiness or (iii) the Customer shall do or cause to be done or permit or suffer any act or thing whereby the Seller's rights in the Goods are prejudiced or an event referred to in clause 11 occurs the Customer shall be deemed to have repudiated any contract and the Seller may thereupon or at any time thereafter accept that repudiation and the contract will terminate forthwith and for all purpose, without prejudice to the Seller's rights under these conditions.

15 Cancellation

- 15.1 If the Customer cancels, extends or delays or purports to cancel, extend or delay the contract or part thereof, or fails to take delivery of any Goods at the time agreed (if any) the Customer will be liable (without prejudice to any other rights of the Seller to claim damages) to indemnify and keep indemnified the Seller against any resulting loss, damage or expense incurred by the Seller in connection with the supply or non-supply of the Goods.
- 15.2 If the Seller is unable (whether temporarily or permanently) to procure any services or goods necessary to enable it to supply the Goods or if the supply of Goods is prevented or hindered by reason of any cause beyond the Seller's control, including but not limited to a force majeure as referred to in clause 19, the Seller may cancel or suspend performance of the contract by notice in writing to the Customer so far as it relates to Goods not then supplied and such cancellation or suspension shall not give rise to any claims by the Customer provided that the Customer shall remain liable to pay for Goods supplied prior to the date of such cancellation or suspension.

16 Promotional Material

No drawings descriptive matter weights dimensions or shipping specifications issued by the Seller or the manufacturer of the Goods nor the descriptions and illustrations contained in the Seller's or the manufacturers catalogues price lists or other promotional material will form part of the contract nor be regarded as a warranty or representation relating to the Goods.

17 Intellectual Property

The Customer shall not change, alter, obscure, remove, conceal or otherwise interfere with any trade mark or trade name attached to the Goods or attach in any way any other mark or name to the Goods without the prior written consent of the Seller.

18 Third party rights

The provisions of the Contracts (Rights of Third Parties Act) 1999 shall not apply to this contract and a person who is not a party to this contract shall have no right under that Act to enforce any term of the contract.

19 Force majeure

Save for the Customer's obligation of payment under clause 3 neither party shall be liable for any default due to any act of God, war, civil disturbance, malicious damage, strike, lockout, industrial action, fire, flood, drought, extreme weather conditions, compliance with any law or governmental order, rule, regulation, direction or other circumstance beyond the reasonable control of either party (Force Majeure Event). Each party shall give notice forthwith to the other upon becoming aware of a Force Majeure Event, the notice to specify details of the circumstances giving rise to the Force Majeure Event.

20 Notices

- 20.1 Any notice under or in connection with this contract of sale shall be in writing and shall be served by first class post or by hand on the party or sent by recorded delivery or e-mail at or to the address of the party set out in this contract or at or to such other address as may be subsequently notified by one party to the other.
- 20.2 In the absence of evidence of earlier receipt any notice shall be deemed to be duly served:
 - 20.2.1 if delivered personally when left at the address in clause 1.6;
 - 20.2.2 if sent by recorded delivery 3 days after posting; and
 - 20.2.3 if sent by e-mail, when received.

21 Entirety of agreement

- 21.1 This Agreement constitutes the entire agreement and undertaking between the Seller and the Customer with regard to the subject matter of this Agreement, and supersedes all prior discussions, agreements and understandings. The parties further agree that no statements or representations made by either party have been relied upon by the other party in entering into the Agreement.
- 21.2 This Agreement may be amended only by written agreement signed on behalf of the Seller and the Customer by a Director thereof or by a person who has been given written authority to sign by a Director thereof.
- 21.3 The Customer shall not assign, transfer or sub-contract any of its rights or obligations arising under, by reason of, or in connection with this Agreement, without the prior written consent of the Seller.

22 General

- 22.1 Failure by the Seller to enforce any of the Conditions will not be construed as a waiver of any rights hereunder
- 22.2 In relation to all obligations of the Customer time of performance is of the essence.
- 22.3 The legal construction of these conditions shall not be affected by their headings which are for convenience of use only.
- 22.4 If at any time any of these conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal or unenforceable in any respect that shall not affect or impair the legality, validity or enforceability of any other provision of these conditions.

23 Jurisdiction

This contract is subject to the law of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts