

# GENERAL CONDITIONS AND TERMS OF USE

## 1 Scope of Application of the General Conditions and Terms of Use

1.1 These General Conditions and Terms of Use (GCT) of Doka Muscat LLC (**Doka**), shall apply to the Doka online shop <https://shop.doka.com> (**Online Shop**) as well as all subdomains and websites belonging to this domain. These GCT shall apply to all legal transactions handled via the Online Shop for the purpose of purchasing or renting virgin and used materials, such as formwork accessories, wall and ceiling formwork and system components (**Products**), by commercial customers (B2B).

1.2 These GCT shall also apply to any future transactions between the customer and Doka handled via the Online Shop, even if no further reference is made to these GCT when such future contract is entered into.

1.3 Customers' general terms and conditions or conditions of purchase shall not apply unless Doka has expressly accepted them in writing.

1.4 Doka reserves the right to amend these GCT at any time without stating reasons. Customers shall be notified of such amendment via e-mail. Continued use of the Online Shop shall be deemed as consent to the amendment of the GCT.

## 2 Copyright

Elements of <https://shop.doka.com> and of any and all subdomains and websites belonging to this domain, such as text, pictures, photographs, graphics are protected under copyright and intellectual and industrial property rights. Such elements must not be copied or edited or used in any other way.

## 3 Data Protection

3.1 The data protection provisions downloadable from <https://www.doka.com/en/home/dataprivacy/index> shall apply and form an integral part of these GCT.

3.2 Doka and Doka GmbH (the Austrian

based parent company of Doka) use customer data (first name, family name, title, e-mail address, password, date of birth, company name, contact person, commercial register number, telephone number, fax number, delivery address and billing address) for e-mails or mailings regarding advertisement of similar products or services of Doka and - for this purpose - Doka also transfers these data to Doka GmbH. The customer shall have the right to object the processing of these data for this purpose and may address his objection to [shop@doka.com](mailto:shop@doka.com).

## 4 Registration of customers, authorisations, identity checks and power of representation

4.1 All customers must register by entering the mandatory items of information. The data supplied by customers must be accurate, complete, truthful and in compliance with legal provisions. The Credit Application Forms shall be properly executed with the correct data.

4.2 Following initial registration, each customer is assigned a user name and password (login data) for subsequent use when logging on to the Online Shop. It is possible to create several users with different authorisations for one customer, with internal approval processes in place with the customer. Doka accepts no liability whatsoever with regard to the allocation and use of such authorisations and any internal approval processes in place with the customer.

4.3 Doka shall have the right to verify, at any time, the identity and power of representation of the user logging on to the site and may also request adequate proof to be supplied (business licence, power of attorney, commercial register excerpt, etc.).

4.4 Customers shall be obliged to keep their login data secret and protect it against unauthorised access by third parties. Customers shall notify any misuse or unauthorised use to Doka in writing immediately. Until such notification any access operation and any action or use of services related to such access

- operation shall be attributed to the customer in question.
- 4.5 If customer do not perform any operations and do not visit the Online Shop for a year or more, the customer account in question shall be removed. However, it is possible to register a new account at any time.
- 5 Offers, purchase orders, types of payment, conclusion of contract, billing**
- 5.1 All offers made by Doka shall be non-binding unless explicitly designated as being binding. The displayed availability of Products in the course of the ordering process shall also be non-binding.
- 5.2 When ordering products, customers shall, in addition to selecting the Products, also specify the type of delivery (delivery or collection), the preferred delivery date or collection date and the preferred type of payment. Doka shall deliver the Products to the address indicated in the project created by the customer. If no address is available, the customer shall have to create a new project, including an address.
- 5.3 If the Products are collected by the customer, payment can be made either upon receipt of the invoice or, at the latest, upon collection using a debit or credit card. Payment upon receipt of invoice shall require the approval of Doka.
- 5.4 If delivery is made by Doka to the agreed place of delivery, payment shall be made either by credit card or upon receipt of the invoice. Payment upon receipt of invoice shall require the approval of Doka. Doka may, at its own discretion, insist on payment by credit card. In the case of payment by credit card, all the relevant credit card information has to be supplied when ordering. It shall be the responsibility of the customer to see to it that the credit card is neither blocked nor expired; any delay in payment for such cause shall be attributable to the customer, and the customer may be liable to pay default financial charges amounting to 7.50% per annum of the outstanding amount from its due date on.
- 5.5 Once a purchase order has been submitted, the customer shall receive a preliminary order confirmation. Note, however, that such a preliminary order confirmation is not deemed to constitute an acceptance of the offer. Doka shall first of all check the submitted offer with respect to Product availability, ability to meet the preferred delivery date / ready for collection date and compliance with any purchase limits that may exist. Customers may view the status of their purchase orders online at any time.
- 5.6 Doka may, at any time and without stating reasons, refuse to enter into a contract without any claim for compensation arising therefrom for the customer.
- 5.7 A purchase contract for the Products shall come into being only once the purchase order has been expressly accepted by Doka. Should Doka fail to supply an express declaration of acceptance, the contract shall come into being as soon as Doka accepts the customer's purchase order by making the Products ready for collection or by delivering the Products.
- 5.8 Invoices shall be issued to customers at the billing address specified by the customers.
- 6 Prices**
- 6.1 All prices in the Online Shop are quoted net, exclusive of VAT or any other import / export duties, ex works under Incoterms 2010.
- 6.2 If a valid framework agreement exists between Doka and the customer, and if the price cannot be displayed in the Online Shop due to technical reasons or can only be displayed under difficult conditions Doka may, as an exception, also refer to the framework agreement instead of stating the online price..
- 6.3 The price of a Product may vary depending on the chosen delivery address, and the resultant amount shall be communicated to the customer accordingly.
- 6.4 Prices of delivery and transport depend on the place and type of delivery chosen by the customer and shall be communicated to the customer during the purchasing process via the Online Shop.

- 7 Delivery and payment, passing of risk**
- 7.1 Customers may, at their own discretion, either collect the Products or have them delivered to a specified place of delivery.
- 7.2 **Collection by the customer:** At the agreed date and time, the customer shall collect the Products from the Doka branch establishment closest to the address indicated by the customer or from any other place expressly agreed upon.
- The Products shall be handed over to the customer only once the purchase price and all costs have been paid, unless payment upon receipt of invoice was expressly agreed upon.
- The risk of loss or accidental damage to the Products shall pass to the customer upon handover to the customer or a third party acting as agent of the customer.
- 7.3 **Delivery:** Provided the price of delivery, type of payment and place(s) of delivery were expressly agreed upon, Doka shall deliver the Products.
- Delivery to the place of delivery (building site) agreed upon shall take place within a reasonable period of time after ordering or within any other delivery periods or at any other delivery dates agreed upon.
- Any delivery periods and delivery dates shall be approximate periods and dates.
- Insofar as payment by credit card was agreed with the customer, delivery shall be effected only after the purchase price has been successfully debited to the customer.
- Supply and delivery of the purchased Products shall be at the customer's risk. The risk of loss or accidental damage to the Products shall thus pass to the customer upon handover to the carrier.
- 7.4 Should the delivery / ready for collection be exceeded by more than two weeks, the customer shall, except in cases of force majeure, be entitled to rescind the contract after having set a period of grace of at least two weeks in vain.
- 7.5 Should the Customer refuse to take delivery of the delivered Products, considering proper coordination between Customer and Doka, delivery and back-delivery charges may apply
- 7.6 Force majeure or other unforeseeable obstacles occurring within Doka's sphere of influence and obstructing delivery / readiness for collection of the Products within the agreed period / at the agreed date shall result in Doka being entitled to extend the period for making delivery / for making the Products ready for collection, or move the delivery / ready for collection date, in a reasonable extent.
- 7.7 Doka shall have the right to make partial deliveries.
- 7.8 Receipt on/crediting to Doka's account shall be relevant for payments being deemed made in due time. In cases of doubt, amounts credited shall be counted towards settling the customer's oldest debt.
- 7.9 Invoices shall be made available to customers online or transmitted electronically and can be viewed online as well as downloaded. 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). Should customers 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, customers shall be sent such e-mails to the e-mail address indicated by them.
- 8 Passage of ownership, retention of title**
- 8.1 Ownership of the purchased material shall pass to the customer upon full payment and taking delivery of the purchased material. Doka shall deliver all purchased materials subject to retention of title. Doka shall retain title to the purchased materials until the purchase price has been paid in full.
- 8.2 Ownership shall also extend to any new items produced through the processing of the delivered Products. Upon

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- processing, combination or commingling of the Products, Doka shall acquire co-ownership of the items thus produced proportionate to the value of the delivered Products in relation to the newly created item.
- 8.3 Customers shall not be allowed to pledge the purchased materials delivered subject to retention of title to third parties or use them as collateral or otherwise dispose of them for the benefit of third parties. The resale of Products delivered subject to retention of title shall be allowed only upon Doka's express written consent. Customers shall assign to Doka, already at this point in time, any and all receivables due from reselling, either in breach of this provision or given Doka's consent, the Products to which Doka has retained title, it being understood that such receivables shall be assigned as an undertaking to pay. The same shall apply mutatis mutandis to new items in which Doka acquires co-ownership. Customers shall include notes to this effect in their books and outstanding receivables lists and shall, upon Doka's request, disclose to Doka the names and addresses of their buyers as well as the number and amount of receivables arising from such resale and notify their buyers of the assignment of such receivables. Any profits made by customers on the resale of Products subject to retention of title by Doka shall be passed on to Doka without delay.
- 8.4 Should customers default on payment, the Products subject to retention of title by Doka shall be returned to Doka without delay upon its request. Insofar as customers do not comply with such request without delay, Doka shall have the right to collect the Products being in the ownership of Doka. In any case, the cost and risks associated with transporting the Products to Doka shall be borne by the customer in question. In such a case, returning or collecting the Products shall not be deemed a rescission of contract. Doka shall have the right to sell the Products thus repossessed to another party and to set off the proceeds of such sale against the receivables due from the customer in question. In such a case, the customer shall be informed of Doka's intention to resell the Products and of the purchase price and may name other customers to Doka within a period of four weeks.
- 9 Documents, non-disclosure of expertise, ban on reverse engineering, download of documents**
- 9.1 Customers shall not have the right to use the documents made available by Doka (user information, operating instructions, user manuals) for any purpose other than the ones provided for in the contract or the document in question.
- 9.2 The expertise contained in the documents is made available to the customer for these purposes only. Customers shall treat such expertise as strictly confidential and shall not have the right to use it in any form whatsoever for the purpose of reverse engineering. Customers shall under no circumstances have the right to reverse-engineer the Products.
- 9.3 Responsibility for the documents downloaded from the download section (including, without limitation, user information or documents for which there is an obligation to make them available to customers) shall lie with the customers themselves. In particular, Doka shall accept no liability for customers downloading the correct document in the correct language for the Product in question.
- 10 Default**
- 10.1 If customers are late in collecting the Products or paying the purchase price, Doka may, granting a reasonable period of grace of at least 14 days, rescind the contract in written form.
- 10.2 Otherwise customers shall be obliged to pay default financial charges in the amount of the relevant base rate plus 7.5% percentage points p.a. in the event of delayed payment. Claims for damages in excess of this shall remain unaffected thereby.
- 10.3 Doka shall be under no obligation to deliver / make ready for collection any further Products for as long as customers are in default of paying invoiced amounts, default financial charges up to 7.5% per annum and/or expenses.

- 11 Withdrawal**
- 11.1 The parties to the contract may rescind the contract, by registered letter, for good cause (such as breach of material contractual provisions, default on payment in spite of a grace period of at least 14 days).
- 11.2 Doka may also rescind the contract if performing the contract cannot reasonably be expected of Doka, even if only for a limited period of time.
- 12 Product returns**
- 12.1 Upon rescission of contract, any Products already delivered shall be returned to Doka within 14 days, at the customer's risk and expense, provided the rescission of contract is not attributable to any fault on Doka's part. In as far as a customer fails to meet this obligation, Doka shall have the right to collect the Products, or have them collected, at the customer's risk and expense.
- 12.2 If the Products to be returned cannot be unambiguously differentiated from others, Doka shall have the right to select a Product of their choice. In such an event, the customer shall hold Doka harmless and indemnify Doka against any third-party claims.
- 13 Warranty, liability, mistake**
- 13.1 Customers shall be obliged to examine the Products for defects without delay, but in any case no later than within **3** days of taking delivery and prior to using such Products and shall notify defects in writing within this period providing a detailed description of any identified defect. After the lapse of this period, no claims shall be heard anymore.
- 13.2 The burden of proving the existence of defects shall lie with the customers.
- 13.3 Defects may, at Doka's discretion, be remedied by subsequent performance (substitute delivery or subsequent delivery of any missing items or exchange) within 5 working days or depending on the availability of materials, after the receipt of valid notification as specified in sub-clause 14.1.
- 13.4 Claims under warranty for notified defects must be asserted in court within a period of one year.
- 13.5 The notice of defects does not discharge customers from their payment obligation. For Doka to be liable under warranty, customers must have met all obligations, including, without limitation, their payment obligations and must have notified the defects in due time and providing detailed specifications.
- 13.6 The fact that Doka may enter into negotiations on defects or complaints shall not imply a waiver of Doka's right to raise the objection that the notice of defects was made too late or lacks adequately detailed specifications.
- 13.7 Customers' recourse to Doka under warranty shall be excluded if customers have resold the Products to consumers and the warranty period has already expired. Unless there are statutory provisions to the contrary which cannot be derogated from, customers shall likewise exclude any such right of recourse vis-à-vis their buyers.
- 13.8 Any liability on the part of Doka for minor negligence shall be excluded. Furthermore, no liability for compensation of consequential damage or lost profits shall be assumed – except in cases where the damage or loss was caused wilfully. The afore-mentioned exclusions of liability shall not apply to cases of personal injury.
- 13.9 Any claims for damages shall be asserted in court by customers within 6 months from obtaining knowledge of damage and damager, at the latest, however, within five years after delivery was made.
- 13.10 Avoidance of contract on grounds of error shall be excluded.
- 13.11 Doka does not warrant continuous availability of the Online Shop and draws attention to the fact that Online Shop services may be restricted or temporarily suspended for necessary reasons (such as maintenance, security, capacity or improvement reasons).
- 14 No Offsetting**
- Customers shall not have the right to offset any receivables due to them from

- Doka against receivables due to Doka, unless the relevant claims are uncontested or have been ascertained with final effect by a court of law.
- 15 Severability clause**
- If, for any reason whatsoever, one or more provisions of these GCT or of any contract based on these GCT are invalid or unenforceable, this shall not affect the validity of the remaining provisions. Any invalid or unenforceable provision shall be replaced by a provision that comes as close as possible to the intended purpose of the provision. The same shall apply mutatis mutandis to any gaps in the provisions.
- 16 Governing law, place of performance, place of jurisdiction**
- 16.1 Any and all legal relationships between Doka and customers shall be subject to Austrian law, with the exception of the conflict of law rules under private international law and the UN Convention on Contracts for the International Sale of Goods.
- 16.2 The place of performance shall be Doka's registered address.
- 16.3 Exclusive jurisdiction for any and all disputes arising from or in connection with these GCT and the transactions based on them shall lie with the court competent in the subject matter in Amstetten, Austria, or, at Doka's discretion, the court competent in the subject matter at the customer's registered address. Doka shall have the right to sue at the general place of jurisdiction competent for the customer in question.
- 17 Miscellaneous**
- 17.1 Purchases made in the Online Shop give rise to the usual costs of Internet use.
- 17.2 All rights and obligations hereunder shall devolve upon any legal successors (singular or universal legal succession). Customers may not transfer any rights and obligations hereunder to a third party without having obtained the explicit prior written consent of Doka.
- 17.3 Any oral agreements, promises and advisements made by Doka employees shall not be valid without a written confirmation by Doka.
- 17.4 There are no oral side agreements. Any amendments or additions to these GCT or the contracts concluded via the Online Shop require written form to be valid; the same applies to any side agreements and warranties and representations as well as to any contractual changes made at a later date, including any waiver of the written form requirement.
- 17.5 E-mail shall be deemed to meet the written form requirement. E-mail shall likewise be sufficient for any other notifications or legally relevant communications unless otherwise provided for in any given case or in these GCT.