

**DOKA FORMWORK AUSTRALIA PTY LTD ACN 149 754 692**

**Trading Terms and Conditions for Sale and Rent – Effective from 30.05.2024**

These Trading Terms & Conditions (**Terms**) apply to the supply of Goods by DOKA to a Customer from time to time. Any supply of Goods by DOKA to the Customer made after the date of acceptance of these Terms is a supply pursuant to the supply agreement constituted by these Terms and the relevant order accepted by DOKA (**Agreement**) and any such supply does not give rise to a new or separate agreement.

**1. Interpretation**

In these Terms unless the contrary intention appears:

**Additional Charges** includes all delivery, handling, storage, charges for damaged equipment, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Price or Equipment Rental Fee, payable by the Customer to DOKA arising out of the sale or hire of the Goods.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney.

**Collateral** means the Customer's present and future right, title and interest in relation to:

- (a) the Goods; and
  - (b) for the purposes of section 105 of the PPSA, the Customer's intellectual property with respect to the Goods, and
- Collateral also includes any proceeds of sale in respect of the Goods or any other Collateral.

**Confidential Information** means all information of or relating to the Goods, DOKA, or of any company associated with it or any of its clients, and any of their computer programs or software, trade secrets, designs, design improvements, know-how, business information, methods, techniques, lists of clients or other information that is not public knowledge, which the Customer may have received, obtained, become aware of, possessed whether before or after the date of the Agreement. Confidential Information includes all information, whether oral, visual or written, and without limitation, the following:

- (c) Information that Doka indicates as confidential;
- (d) Information that would be of commercial value to a competitor; and
- (e) Information that is found in program and software packages, process descriptions or instruction manuals relating to the Goods.

**Customer** means the person to or for whom the Goods are to be supplied by DOKA.

**DOKA** means DOKA FORMWORK AUSTRALIA PTY LTD, ACN 149 754 692.

**DOKA GMBH** means DOKA's headquarter, registered with the Trade Register of Sankt Pölten, Austria, under the registration no. 105743f.

**Equipment Rental Fee** means those fees payable in relation to the Goods rented calculated having regard to the Quotation.

**Event of Default** has the meaning given to the term in clause 29 of these Terms.

**Excluded Matter** means the condition, capacity, quality, operation or fitness for use of, the design or performance standard of; the safety of; the compliance with any law by; the entitlement to, or existence of, any warranty, patent, trade mark, service mark, copyright, registered design or intellectual property affecting or having reference to or any defect in the Goods.

**Ex Works** means "ex works" according to Incoterms 2010 or, after replacement of the Incoterms 2010, the then effective Incoterms.

**Force Majeure Event** means any act of God, war, civil disturbance, pandemics, 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.

**General Terms and Conditions** means the terms and conditions of this Agreement, excluding the terms and conditions outlined in Annexure 1.

**Goods** means the equipment sold or rented to the Customer by DOKA and includes any services provided by DOKA to Customer.

**Insolvency Event** means receivership or other appointment of a controller, deregistration, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise or composition with creditors or ceasing to carry on business.

**Intellectual Property** means all intellectual property rights (including, without limitation, all copyright, designs, trade marks and patents) of any nature in any inventions, designs, works and subject matter.

**Nominated Location** means the Customer's business location where the Goods will be used.

**Online Shop** means Doka online shop <https://shop.doka.com> and all subdomains and websites belonging to this domain.

**PPSA** means the *Personal Property Securities Act 2009 (Cth)*.

**Price** means the list price or rent for the Goods as charged by DOKA at the date of delivery or such other price as may be agreed by DOKA and the Customer prior to delivery of the Goods.

**Quotation** means any quotation provided to Customer by DOKA in relation to particular Goods.

**Rental Period** means the agreed period for the lease of rented Goods by the Customer as per the Quotation, commencing on the despatch of the Goods from the DOKA warehouse/yard and ending on the later of the date the rented Goods are returned to the DOKA warehouse and the last day of the agreed period. Any partial return and /or Delivery will be deducted on a pro-rata basis according to agreed Rental Rates. For the avoidance of doubt the minimum Rental Period is 28 days from the day of despatch from the DOKA warehouse/yard (**Minimum Period**).

## **2. Order for Goods**

- 2.1. An order given to DOKA is binding on DOKA and the Customer, if:
  - (a) a written acceptance is signed for or on behalf of DOKA; or
  - (b) the Goods are supplied by DOKA in accordance with the order.
- 2.2. An acceptance of the order by DOKA pursuant to clause 2 is then to be an acceptance of these Terms by DOKA and the Customer and these Terms will override any conditions contained in the Customer's order.
- 2.3. DOKA reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on DOKA until accepted by it.
- 2.4. An order that has been accepted in whole or in part by DOKA cannot be cancelled by the Customer without obtaining the prior written approval of DOKA, which it may refuse in its absolute discretion.
- 2.5. DOKA reserves the right to make any changes in the specification of the Goods that are required to conform with any applicable statutory requirements or that do not materially affect the quality or performance of the Goods.
- 2.6. Any changes in the ordered quantities will be charged on a pro-rata basis according to the relevant applicable prices and subject to availability of DOKA stock. The quantity and description of the Goods shall be as set out in the Quotation based on the calculations and/or drawings prepared by DOKA or as otherwise expressly agreed to in writing by the parties.
- 2.7. Any such calculations/drawings are based on the general information and the technical data and information on the respective project provided by the Customer. Any technical changes related to the project, included but not limited to the specifications and/or design, shall be reported by the Customer to DOKA immediately in writing. DOKA may then revise any calculations/drawings accordingly. If the Customer does not inform DOKA of any such technical changes in a timely manner or fails to inform DOKA, DOKA will not be liable for any direct or indirect damages/losses related to any such delay or failure to provide changes in the technical data of the project.
- 2.8. Plywood (as far as not built-in to DOKA panels), screws, nails, tools, planks, boards, forming wood, plastic cones and plastic sleeves for tie rods, formwork release, timber for any additional traditional formwork material and all other items that are not specifically mentioned in the Quotation are not included in the material to be delivered and are to be supplied by the Customer only.
- 2.9. All works, such as assembling, disassembling, cutting of the plywood, setting, stripping, cleaning, resetting of the formwork and/or shoring shall be done by the Customer only.
- 2.10. Doka shall supply any material as per the Agreement. Doka reserves the right until and up to the date of delivery to alter any material and/or quantities of material that do not materially affect the quality or performance of the Goods ordered. Final delivery of the Goods will be sufficient for use intended under the Agreement.

## **3. Technical instructions, training assistance and confidentiality**

- 3.1. The use and maintenance of the Goods is governed by technical instructions issued by DOKA (**Instructions**).
- 3.2. If so specified in the Quotation, DOKA will provide job site training at daily rates stated in the Quotation for a DOKA trained Project Technician and DOKA trained Formwork Instructor to the Customer's personnel at the Nominated Location to enable them properly to familiarise themselves with the operation of the Goods.
- 3.3. DOKA shall work out and provide all necessary shop drawings for assembling and setting of DOKA formwork for its initial use if requested by the Customer in writing.
- 3.4. Any technical advice provided by DOKA is limited to Instructions issued by DOKA and the Customer acknowledges that it cannot rely on any representations that are not set out in the Instructions.
- 3.5. The Customer acknowledges that the Customer must use the Goods in accordance with the Instructions and the Customer shall ensure that any person using the Goods is made aware of and complies with the Instructions (if any) and good trade practice.
- 3.6. The Customer shall indemnify DOKA against all loss, damages, costs and expenses awarded against, incurred, paid or agreed to be paid by DOKA in connection with any claim that arises out of:
  - (a) the use of the Goods after the Customer is aware or ought to be aware of any defect in the Goods;
  - (b) any defect in the Goods arising from wilful damage, the negligence of any person (other than DOKA), misuse, abnormal working conditions, or alteration or repair of the Goods without DOKA's prior written approval (fair wear and tear excepted); or
  - (c) any use of the Goods (including the installation, disassembly, application, maintenance or removal of the Goods) other than in accordance with the Instructions (if any) and good trade practice.

- 3.7. The Customer shall not, without the written consent of DOKA, disclose to any third party or use for any purpose other than contemplated under the Agreement any proprietary documents, knowledge and any Confidential Information, software, prices, tools, moulds, samples, models, profiles, drawings, data standard sheets, manuscripts and other technical documentation supplied or made known to the Customer by DOKA.
- 3.8. The Customer shall oblige its employees and any other connected third party to adhere to the duty of confidentiality outlined in clause 3.7 above and shall take all necessary precautionary measures to prevent unauthorised disclosure or use of DOKA's trade secrets or Confidential Information by any employees or third parties.

#### 4. Warranties and Liabilities

- 4.1. DOKA's liability is limited, to the extent permissible by law and at DOKA's option, to:
- (a) in relation to defective Goods:
    - (i) the replacement of the Goods or the supply of equivalent goods;
    - (ii) the repair of the Goods;
    - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
    - (iv) the payment of the cost of having the Goods repaired;
  - (b) Where the defective Goods are services:
    - (i) the supply of service again; or
    - (ii) the payment of the cost of having the services supplied again.
- 4.2. Any claims to be made against DOKA for short delivery of Goods or defective Goods must be lodged with DOKA in writing within 7 days of the delivery date. In case claims are not notified within 7 days of delivery, the goods shall be deemed accepted even with respect to any short delivery of Goods or any defects.
- 4.3. To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and DOKA is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:
- (a) any increased costs or expenses;
  - (b) any loss of profit, revenue, business, contracts or anticipated savings;
  - (c) any loss or expense resulting from a claim by a third party; or
  - (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by DOKA's failure to complete or delay in completing the order to deliver the Goods or the quality of the Goods supplied.
- 4.4. DOKA warrants that the Goods supplied will, at the time of delivery, correspond to the description given by DOKA.
- 4.5. DOKA warrants to the Customer that all of the Goods supplied hereunder will, for a fixed period of six (6) months from the date of the delivery (**Warranty Period**), be of satisfactory quality, PROVIDED ALWAYS THAT:
- (a) the warranty under this clause 4.5 shall not apply where the Goods have been altered in any way or have been subjected to misuse or unauthorised repair; or
  - (b) parts, materials or rented Goods not manufactured by DOKA; or
  - (c) the Goods have been improperly installed, erected or connected;
  - (d) the Customer has failed to observe any Instructions including without limitation any maintenance requirements relating to the Goods;
  - (e) the Customer has failed to notify DOKA of any defect of suspected defect within the time limit stipulated in clause 4.2; or
  - (f) the total price for the Goods has not been paid by the due date.
- Any repaired or replacement Goods will be guaranteed on the terms of this clause 4.5 for the Warranty Period.
- 4.6. In the event that the supply of Goods under this Agreement is subject to the Consumer Guarantees as defined in the *Competition and Consumer Act 2010 (Cth)*, nothing in this Agreement excludes, restricts or attempts to modify any condition, warranty or other obligation in relation to the Goods supplied. The following statement will apply where the Goods are deemed to be the subject of a consumer sale. For the purpose of this statement, 'Our' means 'DOKA' and, 'You' means 'Customer' and 'goods' mean 'Goods':
- Our goods come with guarantees that cannot be excluded under the Australian Consumer law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.*
- 4.7. In the event of a valid warranty claim under clause 4.5 DOKA at its own option, within a reasonable period of time will repair, replace, repay the price if paid or issue a credit note PROVIDED THAT:
- (a) the Customer has notified DOKA of the claim in writing within 7 days of acceptance;
  - (b) the Customer promptly makes available the Goods for inspection and, if so required, promptly returns the Goods affected to DOKA's address, at the Customer's expense and risk; and
  - (c) such defects are found to DOKA's reasonable satisfaction to have arisen solely from DOKA's faulty design, workmanship or materials.
- 4.8. The Customer expressly warrants that he/she is familiar with the technical specifications of the Goods ordered, as well as the technical Instructions and consultation provided by DOKA for its usage. The Customer undertakes to comply with such specifications and technical Instructions and to use the Goods solely for their specified purpose. The Customer confirms that it is also aware that any Goods are designed to be used only with DOKA anchor parts. The Customer shall be solely liable for any defects of the Goods and/or claims of any third parties for any damages and/or injury arising out of the use of defective Goods, if the Customer is responsible for such a defect (e.g. in case of wrongful, unsuitable and/or insufficient use of the Goods and/or if the Goods are modified, altered, installed or operated contrary to the Instructions, included but not limited to the use of non-DOKA anchor parts).

#### 5. Delivery

- 5.1. The times quoted for delivery of the Goods are estimates only and DOKA accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of DOKA.
- 5.2. Risk in accepting the Goods passes on delivery to the Customer.

- 5.3. All Additional Charges are payable by the Customer in addition to the Price or Equipment Rental Fee of the Goods.
- 5.4. Return of Goods sold will not be accepted by DOKA except by prior agreement in writing with DOKA. Any Goods returned will be subject to a restocking charge of 10% of the Price of those Goods.
- 5.5. Where the Customer has agreed to make advance payment for the Goods, delivery will be conditional upon full payment being made to DOKA.
- 5.6. Unless otherwise agreed the Customer will make arrangements for the carriage of the Goods. DOKA will be deemed to have delivered the Goods if it has made the Goods ready for despatch within the agreed time period. Where DOKA 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 will be responsible for the unloading of the Goods.
- 5.7. The Customer will within seven (7) days of delivery check the quantity and quality of any material delivered and inform DOKA in writing of any deficiencies. After the lapse of seven days, the Customer is precluded from making any claim pertaining, including without limitation to quantity, defects and quality of Goods delivered. DOKA will rectify deficiencies within 5 working days after such notification by the Customer is received.
- 5.8. Where the Goods are carried by DOKA or its agent, and there has been damage to or loss of the Goods, the Customer must notify DOKA of any loss or damage to the Goods within 7 days of receipt and the Customer must unload and store the Goods for inspection to enable a claim to be made on the carrier. Any claim for damaged Goods or shortfall or non-delivery must be notified to the carrier by the Customer in the manner and within the appropriate time limit prescribed by the carrier's terms and conditions. In the event of the Customer's failure to comply with the terms of this clause, the Customer will be deemed to have accepted the Goods and any claim by the Customer will be waived and barred.

## **6. Return of Goods Sold**

- 6.1. In the event that the Goods are to be returned to DOKA under the terms of the Agreement, the Customer must provide at least seven (7) days written notice to DOKA before returning the Goods. All arrangements to be made for the return of Goods are the responsibility of Customer.
- 6.2. The Goods must be returned to DOKA in the same condition as delivered to the Customer, except for normal wear and tear, and, in the case of forming panels, cleaned, treated with a release agent and ready for use. Goods, including formwork panels pre-assembled by DOKA, must be returned completely disassembled.
- 6.3. The Customer must pay for any items that are damaged beyond repair or that are not returned in accordance with the Agreement, an amount equal to the Price reduced by a percentage as determined by DOKA, acting reasonably. The cost incurred by DOKA for cleaning, repairing or replacing Goods damaged by drilling, puncturing, bending, cutting or by other than careful use, will be charged to the Customer at prevailing prices.

## **7. Return of Rental Equipment**

- 7.1. At the end of the Rental Period or termination of the Agreement, the Customer must immediately return to DOKA the Goods properly packaged in good and substantial order, repair and condition in accordance with these Terms.
- 7.2. The Customer will pay for the reasonable costs to transport the Goods from any Nominated Premises to the location specified by DOKA to which the Goods is to be returned.
- 7.3. Information regarding the return of the Goods should be sent to DOKA at least forty eight (48) hours prior to the actual date of returning the Goods. The vehicle transporting the Goods should reach DOKA's warehouse before 14:00 in order to be unloaded on the same day. For later returns, DOKA will unload on the next available working day or reschedule the return of the Goods in the first instance.
- 7.4. Material to be returned shall be properly cleaned, bundled, and loaded on the truck in such a way that easy and safe for unloading by forklift can be done at the warehouse of DOKA. Such unloading of material shall not be charged to the Customer. Material which cannot be unloaded by forklift and/or in a safe manner and that has to be unloaded manually will be charged to the Customer at a rate charged by Doka for such work from time to time.
- 7.5. Any cleaning of dirty material not exceeding any usual wear and tear of the material will be free of charge. Any cleaning required to be done because of excessive wear and tear of the Goods will be charged to the Customer at a rate charged by Doka for such work from time to time. All material to be returned in a clean and workable condition as supplied.
- 7.6. DOKA reserves the right to check all materials returned to their yard within a maximum period of ten (10) days, during which the rental return delivery report (**RRDR**) is faxed or e-mailed to the Customer, informing of quantity and quality of materials received. Damaged materials shall be kept separate from other material for a period of seven (7) days after RRDR is faxed / emailed, for inspection to verify the extent of any damages, losses and/or collection of such materials. In case the Customer fails to send a representative to such inspection and/or collection, the Customer accepts that such inspection is undertaken by DOKA only and accepts the contents of the RRDR provided by DOKA including any damages and/or losses reported therein. In case of absence of collection within the period of 7 days from the date of sending the RRDR, such damaged material will be scrapped, and no counterclaims will be considered.
- 7.7. Should any unforeseen circumstances arise directly or indirectly affecting the Customer's ability to return the balance materials on site determined by DOKA, DOKA reserves the right to invoice the amount in accordance with the current DOKA material price list applicable at the time of claiming compensation.
- 7.8. In the event of the rented Goods not being returned to DOKA's yard or returned damaged beyond the possibility of repair as reported in the RRDR, DOKA reserves the right to claim compensation from the Customer in the amount of DOKA's material price list applicable at the date of the Agreement. In cases of minor damages within the possibility of repair as reported in the RRDR, DOKA reserves the right to claim either the amount equal to any repair costs or an amount equal to the reduction in the value of the material at their sole discretion.
- 7.9. At any time, DOKA may request that the Customer confirm the remaining balance of rented Goods on the Customer Project. Should the Customer fail to respond to DOKA within 14 days of having received such request, the remaining rented Goods on the Customer Project may be deemed lost and DOKA will be entitled to invoice the value of such rented Goods to the Customer in accordance with sub clause (h) above.

- 7.10. If Goods is not returned by the Customer upon the expiry of the Rental Period or termination of this Agreement, DOKA may repossess the Goods. DOKA may also repossess the Goods if an Event of Default has occurred.
- 7.11. DOKA may repossess the Goods pursuant to this clause:
- (a) without notice;
  - (b) directly or through its agents; and
  - (c) through whatever means it thinks fit.
- 7.12. Without limiting those means, DOKA may enter any place where the Goods is or is suspected to be and may break open any gate, door or fastening and detach and dismantle the Goods. The Customer indemnifies DOKA from any loss, cost or damage arising from the exercise of DOKA's rights under this clause.
- 7.13. Customer may, within the first three (3) months of the commencement of the Rental Period only, purchase any rented Goods at a special purchase price. DOKA will on request and within this time period only, offer a reasonable purchase price to the Customer.
- 8. Holding over**
- 8.1. If the Customer holds over the Goods with DOKA's consent after expiry of the Rental Period, the Customer will be a monthly lessee subject to the following paragraphs and, to the extent applicable, the other provisions of these Terms.
- 8.2. The Customer must pay the Equipment Rental Fees at the end of each month in arrears.
- 8.3. The Equipment Rental Fees payable at the end of each month will equal a monthly proportion of the total Equipment Rental Fees payable by the Customer during the year ending on the date on which the original Rental Period expired.
- 9. Price and Payment**
- 9.1. The Customer must pay the Price, any Equipment Rental Fee and the Additional Charges to DOKA. Prices are quoted net, Ex Works and exclude any taxes, duties, packaging, carriage and insurance.
- 9.2. If the Customer is in default, DOKA may at its option withhold further deliveries or cancel a contract or this Agreement without prejudice to any of its existing rights.
- 9.3. Subject to clause 9.5, all payments are due within 30 days of the date of invoice. In case of a delay in payment, DOKA reserves the right to charge interest on the outstanding amount at the rate of 1.5% per month from the due date.
- 9.4. All amounts payable by the Customer under these Terms must be paid without set-off or counter claim of any kind.
- 9.5. In the event of default in payment by Customer, all outstanding charges related to this Agreement other than the amount already in default, become immediately due and payable.
- 10. Retention of Title**
- 10.1. Ownership, title and property in the Goods being rented to the Customer remains with DOKA unconditionally.
- 10.2. Ownership, title and property in the Goods being sold to the Customer and in the proceeds of sale of those Goods remains with DOKA until payment in full for the Goods and all sums due and owing by the Customer to DOKA on any account has been made. Until the date of payment:
- (a) the Customer has the right to sell the Goods in the ordinary course of business; and
  - (b) the Goods are always at the risk of the Customer.
- 10.3. The Customer is deemed to be in default immediately upon the happening of any of the following events:
- (a) if any payment to DOKA is not made promptly before the due date for payment;
  - (b) if the Customer ceases to carry on business or stops or suspends any payment or states its intention of so doing;
  - (c) if the Customer is unable to pay its debts as they fall due; or
  - (d) if any cheque or bill of exchange drawn by the Customer payable to DOKA is dishonoured.
- 10.4. In the event of a default by the Customer, then without prejudice to any other rights that DOKA may have at law or under this Agreement, DOKA may take any or all of the following actions:
- (a) DOKA or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods;
  - (b) DOKA may recover and resell the Goods;
  - (c) if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full:
    - (i) DOKA may in its absolute discretion seize all goods matching the description of the Goods and hold such goods for a reasonable period until the respective claims of DOKA and the Customer may be ascertained
    - (ii) after the end of the period in clause 10.4(c)(i), DOKA must promptly return to the Customer any goods the property of the Customer; and
    - (iii) DOKA is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
  - (d) In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for DOKA. Such part will be an amount equal in dollar terms to the amount owing by the Customer to DOKA at the time of the receipt of such proceeds. The Customer will pay DOKA such funds held in trust upon the demand of DOKA.
- 10.5. Separately, Customer hereby charges all its right, title and interest to and in the proceeds of sale of the Collateral as original Collateral, or any of it, in favour of DOKA.

10.6. DOKA shall be entitled to seek a court injunction to prevent the Customer from selling, transferring or otherwise disposing of the Goods.

## 11. PPSA

11.1. Capitalised terms in this clause 11 have the same meaning as given to them in the PPSA, unless otherwise defined in this Agreement.

11.2. DOKA and the Customer acknowledge that these Terms constitute a Security Agreement and entitle DOKA to claim:

- (a) a Purchase Money Security Interest ("PMSI") in favour of DOKA over the Collateral supplied or to be supplied to the Customer as Grantor pursuant to these Terms; and
- (b) a Security Interest over the proceeds of sale of the Collateral referred to in clause 11.2(a) (**Proceeds**) as original Collateral.

11.3. The goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms.

11.4. The Proceeds referred to in clause 11.2(b) falls within the PPSA classification of "Account".

11.5. DOKA and the Customer acknowledge that DOKA, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to Customer pursuant to these Terms and in the relevant Proceeds.

11.6. To the extent permissible at law, the Customer:

- (a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer to DOKA;
- (b) agrees to indemnify DOKA on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
  - (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of DOKA; and
  - (ii) enforcement or attempted enforcement of any Security Interest granted to DOKA by the Customer.
- (c) agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms;
- (d) agrees to waive its right to do any of the following under the PPSA:
  - (i) receive notice of removal of an Accession under section 95;
  - (ii) receive notice of an intention to seize Collateral under section 123;
  - (iii) object to the purchase of the Collateral by the Secured Party under section 129;
  - (iv) receive notice of disposal of Collateral under section 130;
  - (v) receive a Statement of Account if there is no disposal under section 132(4);
  - (vi) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
  - (vii) receive notice of retention of Collateral under section 135;
  - (viii) redeem the Collateral under section 142;
  - (ix) reinstate the Security Agreement under section 143; and
  - (x) receive a notice to retain a collateral or give a notice of objection under section 134(2).
- (e) All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.

11.7. To the extent permissible at law:

- (a) DOKA need not comply with, and the Customer may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of;
- (b) If DOKA exercises a right, power or remedy in connection with the Collateral or Security Interest that it provides for, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless DOKA states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA; and
- (c) the Customer waives its right to receive any notice or copies of any document (including notice of a Verification Statement) that is required by the PPSA. However, this does not prevent DOKA from giving a notice under the PPSA.

11.8. Where DOKA is supplying Goods to the Customer under a rental arrangement, the Customer agrees and acknowledges that this Agreement is a PPS Lease for the purposes of the PPSA and that Customer grants to DOKA a Security Interest over the Goods.

11.9. The Customer undertakes to:

- (a) do all things necessary and provide DOKA on request all information DOKA requires to register a Financing Statement and/or Financing Change Statement over the Customer and the Customer waives any rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement);
- (b) not to change its name in any form or other details on the Register without first notifying DOKA;
- (c) procure the removal from the Register of any registration which affects the priority of DOKA's Security Interest in the Goods;
- (d) not create or allow to exist a registration on the Register in relation to any Security Interest (other than a Security Interest in DOKA's favour) in the Goods;
- (e) do all things necessary to protect DOKA's Security Interest in the Goods, including advising third parties of DOKA's ownership of, and Security Interest in, the Goods;
- (f) refrain from doing anything which could give rise to any claim adverse to DOKA's ownership of, and Security Interest, in the Goods; and
- (g) notify DOKA immediately if a third party makes any such claim.

11.10. The Customer appoints DOKA as its attorney to sign in the Customer's name all documents that DOKA considers necessary to enforce or protect its rights and powers under this Agreement and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to this Agreement and the Security Interest created by this Agreement.

11.11. This Agreement creates a Security Interest in all Goods that DOKA has supplied to the Customer and all Goods that DOKA supplies to the Customer in the future. Initial registration of a Financing Statement by DOKA in respect of the Customer under the PPSA covers Security Interests in Goods supplied now or subsequently under this Agreement.

## 12. On-Sale

The Customer agrees that upon the on-sale of any Goods to third parties that is permitted under these Terms, it will:

- (a) inform any third party involved of these Terms;
- (b) inform any third party of DOKA's product warranties if any; and
- (c) not make any misrepresentations to third parties about the Goods.

## 13. Company

13.1. If the Customer is a company, Customer warrants to DOKA that:

- (a) all of the Customer's directors (**Director Guarantors**) have agreed to this Agreement;
- (b) the Director Guarantors will jointly and severally unconditionally guarantee to DOKA the performance of the Customer's obligations under this Agreement;
- (c) the Director Guarantors will jointly and severally unconditionally indemnify DOKA against any loss suffered by DOKA by reason of any non-performance by the Customer of any obligation under this Agreement; and
- (d) the Director Guarantors will enter into a deed of guarantee and indemnity with DOKA in relation to the Customer's obligations under this Agreement (if requested to do so by DOKA).

13.2. The Customer must advise DOKA of any alteration to its corporate structure (including, but not limited to, by changing directors, shareholders, shareholder's agreement or its constitution). In the case of a change of directors or shareholders, DOKA may ask for the new directors or shareholders to sign a guarantee and indemnity. This clause 13.2 does not apply to a Customer who is a publicly listed company.

## 14. Trustee Capacity

If Customer is the trustee of a trust (whether disclosed to DOKA or not), Customer warrants to DOKA that:

- (a) Customer enters into this Agreement in both its capacity as trustee and in its personal capacity;
- (b) Customer has the right to be indemnified out of trust assets;
- (c) Customer has the power under the trust deed to enter into this Agreement; and
- (d) Customer will not retire as trustee of the trust or appoint any new or additional trustee without first advising DOKA.

## 15. Partnership

15.1. If Customer is a partnership:

- (a) the Customer warrants to DOKA that all of the Customer's partners have agreed to this Agreement;
- (b) the Customer has the full authority to enter into this Agreement on behalf of the partnership; and
- (c) the Customer must not alter the partnership (including, but not limited to, adding or removing partners or altering its partnership agreement) without advising DOKA.

## 16. Equipment Rental

16.1. During the Rental Period, DOKA will hire to the Customer and the Customer will rent from DOKA the rental Goods on the terms set out in these Terms.

16.2. Any partial return and/or delivery of rental Goods shall be deducted pro-rata according to agreed rental rates.

## 17. Equipment

17.1. Any 'purchase only materials' related to this Agreement shall be new material only unless specified and agreed otherwise.

17.2. Any item rented by the Customer shall be supplied by DOKA in a clean and good working condition. The item shall be in a used condition or if not available as used, a new item shall be supplied.

## 18. Rent and Invoicing

18.1. DOKA will provide the Customer with a valid tax invoice for the Equipment Rental Fees monthly (or as otherwise agreed by DOKA) and subject to compliance with the then-relevant legislation, charge GST at the then-prevailing rate on the value of any taxable supplies made under this Agreement and may recover such GST from the Customer. The Customer will pay each tax invoice within 30 days from date of the tax Invoice or as otherwise agreed by DOKA.

18.2. The Customer shall counter-check the correctness of all invoices submitted by DOKA within fifteen (15) days of receipt thereof. Invoices are deemed correct and accepted by the Customer if DOKA receives no information to the contrary. In case of any discrepancies, the Customer shall notify DOKA in writing within fifteen (15) days of receiving what is deemed to be incorrect invoice/s. Absent manifest error, DOKA will no longer consider the Customer's claims that are made at a later date.

18.3. The Customer's obligation to pay the Equipment Rental Fees under this Agreement is absolute and unconditional and will not be affected by anything which might otherwise affect the payment at law or in equity, including any defect in the Goods or the condition, operation or fitness for use of the Goods or any damage to or loss of the Goods or any prohibition, interruption or other restriction of or against Customer's use, operation or possession of the Goods for any reason whatsoever. It is agreed by the parties that the Equipment Rental Fees will continue to be payable in all events in the manner and at the times agreed.

18.4. Any changes in the ordered quantities and/or Rental Periods will be charged on a pro-rata basis according to the relevant applicable prices as in this offer and subject to availability of DOKA stock.

18.5. For the avoidance of doubt the Customer agrees that it will be liable for the Equipment Rental Fees and Additional Charges for the Minimum Period regardless of whether they return the Goods prior to the Minimum Period.

## 19. Transport and Installation of rental Goods

19.1. The costs for the packaging is the responsibility of the Customer.

19.2. The costs for the transport (including transport insurance) up to the Nominated Location and the installation of the Rental Goods are the responsibility of the Customer.

- 19.3. DOKA shall not be held liable for any damages as a result of any delay or failure of delivery due to a Force Majeure Event or any acts or omissions of Customer or any of its representatives. In the event of any such delay, DOKA is discharged from its obligation to deliver and the date of delivery shall be extended for a period equal to the time lost by the reason of delay, if such delay is caused by an act or omission of the Customer or any of its representatives, DOKA shall be reimbursed for any additional costs arising from such delay
- 19.4. DOKA shall supply any material as per the scope of delivery. DOKA reserves the right until and up to the date of delivery to alter any quantities of material which do not materially affect the quality or performance of the material ordered. Final delivery will be sufficient for use.
- 19.5. All works, such as assembling, cutting of the plywood, setting, stripping, cleaning, resetting of the Formwork and/or shoring shall be done by the Customer only.
- 19.6. The Customer shall within seven (7) days of the date of delivery check the quantity and quality of any material delivered and inform DOKA in writing of any deficiencies. After the lapse of seven days, and subject always to the law, the Customer is precluded from making any claim pertaining, including without limitation to quantity, defects and quality of material delivered. DOKA shall rectify deficiencies within five (5) working days after such notification by the Customer is received.

## **20. Permitted Use and Storage of Goods**

- 20.1. The Customer agrees to use the Goods only in accordance with the terms of the Agreement and for the purpose notified by DOKA, and the Customer shall operate the Goods by competent and properly qualified, trained and (where applicable) licensed persons. The Customer shall do so in accordance with DOKA's specifications and Instructions, and the requirements (if any) of any insurer of the Goods that are made known to the Customer.
- 20.2. All operating costs associated with the use of the Goods are the responsibility of the Customer.
- 20.3. The Customer shall not cause or permit the Goods to be used in any manner that would render it liable to confiscation, forfeiture, seizure, destruction or condemnation.
- 20.4. The Customer shall not cause or permit the Goods to be used in any way in which the Goods' safety or the safety of any person may be imperilled or that may result in the Goods not being insured in accordance with clause 25.
- 20.5. The Customer must store the Goods at all times at the Nominated Location. The Customer shall not part with possession of the Goods or remove the Goods from the Nominated Location.
- 20.6. The Customer must ensure that the Goods are stored at all times in accordance with any Instructions and directions given by DOKA with respect to the storage requirements for the Goods.
- 20.7. The Customer shall permit and enable DOKA and its representatives (including any experts appointed by it), whenever DOKA reasonably requires, to:
- inspect or test the Goods;
  - examine, make copies of or take extracts from, the books of account, records, reports and other documents relating to the Goods; and
  - for those purposes, to have access to any place where the Goods are located.
- 20.8. The Customer shall ensure that:
- the Goods are not employed in any trade or business that is prohibited by law;
  - the Goods and their use comply with all laws and all relevant authorisations and permits;
  - if registration is required under any law, the Goods are registered in the name of DOKA; and
  - all authorisations and permits required for the use and maintenance of the Goods and any modifications to the Goods are promptly obtained and kept in force.
- 20.9. The Customer expressly confirms that it is familiar with the technical specifications of the material ordered, as well as the technical Instructions and consultation provided by DOKA for its usage. The Customer undertakes to comply with such specifications and technical Instructions and to use the material solely for their specified purpose. The Customer confirms that it is also aware that any material is designed to be used only with DOKA anchor parts. The Customer shall be solely liable for any defects of the material and/or claims of any third parties for any damages and/or injury arising out of the use of defective material, if the Customer is responsible for such a defect, e.g. in case of wrongful, unsuitable and/or insufficient use of the material and/or if the material is modified, altered, installed or operated contrary to instructions of DOKA, included but not limited to the use of non-DOKA anchor parts.

## **21. Ownership and Maintenance of rental Goods**

- 21.1. At all times DOKA remains the owner of the rental Goods, and the Intellectual Property relating to the rental Goods, and the Customer may not:
- sell, assign, give, lend, pledge, sell, mortgage, lease or in any way part with possession of the rental Goods, or agree or attempt to do so;
  - remove or permit the removal of the rental Goods from the Nominated Location without the prior written consent of DOKA;
  - permit any person other than the Customer's employees or authorised agents to use or operate the rental Goods.
- 21.2. Except to the extent necessary to enable the proper use of the rental Goods in the ordinary course of its business, the Customer shall ensure that the rental Goods are not affixed to any other property (including any land or building). If the rental Goods are affixed to any other property they will not be regarded as a fixture to or part of that property. Subject to this Agreement, the rental Goods will be removable by DOKA despite the affixation.
- 21.3. Throughout the Agreement the Customer will permit access to DOKA or its duly authorised representative at all times with or without notice to come onto any Nominated Location or such other premises where the rental Goods may be kept for the purposes of inspecting, repairing and generally maintaining the rental Goods or to take possession of the rental Goods upon expiry of the Rental Period or termination of this Agreement for any reason.
- 21.4. Subject to clause 19 (e) throughout the Rental Period the Customer must keep the rental Goods in the same good condition as at the commencement date of the relevant Rental Period subject to fair wear and tear.



21.5. Unless otherwise agreed by DOKA in writing, any maintenance and repair of the rental Goods must only be undertaken by DOKA. The Customer will be responsible for any costs associated with maintenance or repair arising from damage to the rental Goods that is caused by the Customer, its employees, agents or representatives. The Customer is required to clean the rental Goods at the Nominated Location.

21.6. Without limiting the Customer's other obligations under this clause, and subject to the DOKA's rights pursuant under these Terms, the Customer will at the Customer's own expense replace with parts of similar quality and type each and every part of the rental Goods that may be damaged beyond reasonable repair or loss or otherwise rendered unsuitable or unavailable for its intended use.

## **22. No warranty as to fitness etc.**

The Customer warrants and agrees with DOKA that:

- (a) the Customer has examined the Goods and that the Customer is satisfied that the Goods comply with the description provided by DOKA, are in good condition and are reasonably fit for the Customer purposes; and
- (b) except for such conditions or warranties as are required by law to be implied, no guarantee, condition, warranty or representation is given by DOKA whether in relation to the condition or fitness of the Goods or the date of delivery of it or its disposal at the expiration of the Agreement or in relation to taxation or otherwise and any express or implied guarantee, condition or warranty oral or in writing as to title, quiet enjoyment, fitness, safety or otherwise of the Goods prior to or at any time during the Agreement is excluded to the maximum extent permitted by law.

## **23. Quiet enjoyment**

Subject to the Customer duly and punctually paying the Equipment Rental Fees that are due and observing and performing the obligations, liabilities and other provisions in this Agreement on the part of the Customer to be observed and performed, DOKA shall not interfere with the Customer's quiet possession of the Goods subject always to the rights of DOKA under this Agreement.

## **24. Loss and Destruction**

24.1. While the Customer is in possession or control of the Goods, the Customer is liable for any kind of damage to the Goods caused by improper use, external influences (e.g. fire, water, hazard) or damage to the Goods.

24.2. DOKA will not be liable for any loss or damage, whether arising in contract, tort or otherwise, sustained by the Customer or any other person which may be sustained in connection with this Agreement or the subject matter of this Agreement. Such loss or damage may include, but is not limited to, loss or damage caused by the negligence or wilful act or default of DOKA or others, whether consequential or otherwise and whether or not such loss or damage is reasonably foreseeable.

## **25. Risk and Insurance of Rented Equipment**

25.1. Risk passes to the Customer at the time when the Goods is made available by DOKA for collection by the Customer.

25.2. The Customer will maintain a comprehensive insurance policy for damage (whether accidental or otherwise), loss, fire, theft, destruction of the Goods to its full replacement value and which will include a public liability component of not less than \$10,000,000 in respect of any one single accident or event. The Customer must effect such insurance to the satisfaction of DOKA prior to the first delivery of any Goods to the Customer.

25.3. The Customer will not at any time during the Rental Period do permit or suffer to be done any act, matter or thing whereby any insurances in respect of the Goods or any other insurances required to be maintained pursuant to this Agreement may be vitiated or rendered void or voidable or whereby any claim may be declined.

25.4. The Customer will comply with all terms, conditions and requirements relating to any insurance including but not limited to the due and punctual payment of all insurance premiums.

25.5. All policies of insurance liable or required to be effected by the Customer under this Agreement will be taken out in such form as may be and with an insurance office or company of recognised responsibility approved by DOKA.

25.6. The Customer will in respect of any policy of insurance to be effected by the Customer under this Agreement if so required produce to DOKA the policy of insurance and the receipt of the last premium or a current renewal certificate.

25.7. The Customer irrevocably authorises DOKA to use the Customer's name and to act on the Customer's behalf in exercising any rights or instituting, carrying on and enforcing any legal proceedings which DOKA thinks desirable to protect DOKA's rights in the Goods or to recover and/or compromise any claim for loss or damage under any insurance policy and give effectual releases and receipts for the insurance policy.

## **26. Changes to the Equipment**

26.1. The Customer must not make any alterations to the Goods without prior written consent from DOKA.

26.2. At the end of the rental period or upon termination of the Agreement, the Customer must, if so required by DOKA:

- (a) remove at the Customer's cost any alterations from the Goods and have made good any damage caused by the removal; and
- (b) return the Goods in the state and condition that the Agreement requires the Customer to keep it in.

26.3. Any improvements or alterations of the Goods which are made become the property of DOKA. Upon termination of the Agreement, the Customer does not have a right to claim compensation from DOKA in this respect.

## **27. Sub-lease**

The Customer must not sub-lease or otherwise give possession, access to, or use of, the Goods or any part of the Goods to a third party without the prior written consent of DOKA.

## **28. Confidentiality**

28.1. All Confidential Information is and will remain the exclusive property of DOKA.

- 28.2. The Customer must not, except in the proper performance of the Agreement or as required by law or by DOKA, either during the continuance of the Rental Period or at any later time, directly or indirectly communicate any Confidential Information to any person without the prior written consent of DOKA, and the Customer must at all times use its best endeavours to prevent the use or disclosure of any DOKA Confidential Information by third parties.
- 28.3. Unless the Customer has been given written permission from DOKA, the Customer must not, except as reasonably necessary to perform the Customer's obligations under this Agreement:
- (a) seek to obtain Confidential Information to which the Customer has not been granted access;
  - (b) remove Confidential Information from the Customer's premises;
  - (c) delete or destroy any Confidential Information; or
  - (d) make copies of Confidential Information.
- 28.4. These obligations will continue to apply after the termination of the Agreement.
- 28.5. The obligations of confidentiality set out above do not apply to Confidential Information:
- (a) that is or becomes generally available to the public (other than as a result of any breach by the Customer);
  - (b) that is received from another person provided that person was not in breach of confidence to DOKA;
  - (c) that is disclosed with the prior written consent of DOKA.
- 28.6. The Customer shall oblige its employees and any other connected third party to respect this duty of confidentiality and shall take all necessary precautionary measures to prevent unauthorized disclosure or use of DOKA's trade secrets by employees or third parties.

## 29. Termination of Rental Agreement

- 29.1. Either party can terminate the Agreement by giving the other party 2 (two) weeks written notice of such termination.
- 29.2. Each of the following is an Event of Default:
- (a) The Customer has used the Goods in a manner that is inconsistent with this Agreement;
  - (b) An amount equal to at least two months of gross Equipment Rental Fees remain unpaid within 10 days after receipt by the Customer of written notice from DOKA requesting payment;
  - (c) The Customer repudiates the fundamental obligations of the Agreement;
  - (d) The Customer fails to observe or perform any obligation or other provision of the Agreement on its part to be observed or performed and such failure continues for 10 days or more after notice in writing has been given by DOKA requiring the Customer to remedy the same; or
  - (e) The Customer becomes subject to an Insolvency Event.
- 29.3. At any time upon or after the occurrence of an Event of Default DOKA may by notice in writing to the Customer immediately terminate the Agreement and take possession of the Goods and the Customer will on demand deliver the Goods at the Customer's expense to DOKA and in accordance with the directions given by DOKA.
- 29.4. If the Customer cancels, extends or delays, or purports to cancel, extend or delay this Agreement or part thereof, or fails to take delivery of any Goods in accordance with the Agreement, the Customer will be liable (without prejudice to any other rights of DOKA to claim damages) to indemnify and keep indemnified DOKA against any resulting Loss incurred by DOKA.
- 29.5. If DOKA 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 DOKA's control, including but not limited to a Force Majeure Event as referred to in this Agreement, DOKA may cancel or suspend performance of this Agreement 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, however the Customer shall remain liable to pay for Goods supplied prior to the date of such cancellation or suspension.

## 30. Indemnity

To the full extent permitted by law, Customer will indemnify DOKA and keep DOKA indemnified from and against any liability and any loss or damage DOKA may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by Customer or its representatives.

- (a) Unless expressly otherwise agreed to in writing with specific reference to this clause herein, under no circumstances shall DOKA be taken to have knowledge of the Customer's main contract or sub-contract with the developer or main contractor as the case may be, or to have accepted any form of obligations thereunder or in relation thereto, whether labelled 'back-to-back' obligations or otherwise.
- (b) DOKA accepts no liability for any loss, damage, cost, loss of profits, anticipated savings, wasted expenditure, loss of contracts with third parties, goodwill or any type of special, indirect or consequential loss (**Loss**) whether suffered by the Customer or by any third party and whether or not DOKA was aware that such Loss was possible or such Loss was otherwise foreseeable, whether such Loss arises from any representation, recommendation or advice made or given in relation to the Goods, the use of the Goods, or the failure by DOKA to observe and fulfill its obligations under the Agreement or otherwise.
- (c) The Customer shall indemnify, defend and hold harmless DOKA in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred as a result of or in connection with any claim made against DOKA by a third party in respect of any matter caused by the Customer or for which liability has been assumed by the Customer.
- (d) DOKA's liability to the Customer in contract or tort (including negligence or breach of statutory duty) or by way of contribution or indemnity or howsoever otherwise arising, shall be limited to an amount not exceeding ten percent (10%) of the Price of the Goods supplied up to the date of the breach.
- (e) Without prejudice to the generality of the foregoing, unless otherwise expressly agreed to in writing with specific reference to this clause, under no circumstances shall DOKA be liable:
  - (i) for liquidated damages pursuant to the said main contract or sub-contract, as the case may be;
  - (ii) to maintain any policies of insurance;
  - (iii) to provide any performance bond; or

- (iv) to have any monies withheld on account of any retention fund.
- (f) The Customer indemnifies DOKA against any loss, cost, charge, liability or expense DOKA or any of its officers or employees sustains or incurs as a direct or indirect result of:
  - (i) use, storage, maintenance or handling of the Goods other than in accordance with the terms of the Agreement;
  - (ii) any Event of Default occurring;
  - (iii) the termination of the Agreement before the end of any Rental Period where such termination is caused by the Customer;
  - (iv) the repossession of the Goods by DOKA under the terms of this Agreement;
  - (v) any claim or demand made against DOKA in respect of any damage or loss to any property or death of or injury or loss to any person indirectly or directly caused by the Goods or anything done in, with or near the Goods while the Goods is in the possession of, or under the control of, the Customer.
- (g) The Customer will indemnify DOKA against any loss of (including any confiscation, seizure or repossession) or damage to or destruction of the Goods howsoever caused.

### **31. Other Security and charge**

- 31.1. The Customer charges in favour of DOKA all of its estate and interest in any real property that the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- 31.2. The Customer appoints as its duly constituted attorney DOKA's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any DOKA may choose to lodge against real property that the Customer may own in any Land Titles Office in any state or territory of Australia, even though the Customer may not have defaulted in carrying out its obligations hereunder.
- 31.3. Where the Customer has previously entered into an agreement with DOKA by which the Customer has granted a charge, mortgage or other security over real property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this Agreement. DOKA may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

### **32. Promotional material**

- 32.1. No drawings, descriptive matter, weights, dimensions or shipping specifications issued by DOKA or the manufacturer of the Goods nor the descriptions and illustrations contained in DOKA's or the manufacturers catalogues price lists or other promotional material will form part of this Agreement nor be regarded as a warranty or representation relating to the Goods.
- 32.2. The Customer shall allow DOKA to take photographs of the Goods at the Customer's premises for promotional purposes upon the written request of DOKA. The Customer's consent shall not be unreasonably withheld.

### **33. Intellectual property**

- 33.1. DOKA for and on behalf of itself and its related bodies corporate reserves ownership in any Intellectual Property Rights, relating to the Goods. Nothing in this Agreement operates or is intended to deny DOKA or its related bodies corporate, or confer on the Customer, such Intellectual Property Rights in the Goods.
- 33.2. If a third party asserts a claim for breach of its intellectual property rights arising from the supply or use of the Goods, the Customer shall immediately inform DOKA and DOKA shall be solely responsible for the defence, resolution and settlement of any such claim. The Customer shall at DOKA's cost and request render such reasonable assistance as DOKA requires in defending any such claim. In no circumstances shall the Customer acknowledge or concede the validity of any such claim except with DOKA's express written consent. If any such claim against DOKA succeeds, DOKA shall at its option use its best endeavours to obtain a right to use or license any such intellectual property rights or modify the Goods or replace them at its cost.
- 33.3. The Customer, its employees and representatives must not copy, reproduce, re-package or resell in any manner; or 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 DOKA.
- 33.4. In the event of non-observance of clause 33.3 immediately above, DOKA shall have the right to take all relevant legal action against the Customer, its employees, any of its representatives and/or any related parties to claim damages for any potential loss of revenue and loss of its position as market leader, injunctive relief and for a court order to seize, remove, confiscate any such related documents and/or items that may indicate or is linked to the infringement or passing off acts and safeguard DOKA's business interest with respect to the Goods and/or any other remedy or relief that may be granted by the Courts.

### **34. Force majeure**

Save for the Customer's obligation of payment under this Agreement, neither party shall be liable for any default due to a 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.

### **35. Dispute Resolution**

- 35.1. If a dispute arises out of or in connection with the Agreement notice of such dispute must be given by one Party to the other.
- 35.2. DOKA and the Customer shall first seek to settle such dispute amicably.
- 35.3. In the event such dispute cannot be settled within a period of 30 days calculated from the date of notice of such dispute given by either Party, either Party may commence actions in the relevant court.

### **36. Notices**

- 36.1. A notice or other communication required or permitted to be given by one party to another must be in writing and:
- (a) delivered personally;
  - (b) sent by pre-paid mail to the address of the addressee specified in this Agreement; or
  - (c) sent by email to the email address of the addressee.

36.2. A notice or other communication is taken to have been given (unless otherwise proved):

- (a) if mailed, on the second business day after posting; or
- (b) if sent by email before 4 pm on a business day at the place of receipt, on the day it is sent and otherwise on the next business day at the place of receipt.

36.3. A party may change its address for service by giving notice of that change in writing to the other parties.

**37. Amendment**

DOKA may amend these Terms, including this clause, at any time by written notice.

**38. Assignment**

38.1. The Customer may not assign, transfer or sub-contract any of its rights or obligations arising under, by reason of, or in connection with the Agreement, without the prior written consent of DOKA.

38.2. DOKA may assign, transfer or sub-contract any of its rights or obligations arising under, by reason of, or in connection with the Agreement.

**39. Privacy**

DOKA may collect Personal Information (as defined in the Privacy Act) about any guarantor involved in this Agreement for the purposes of this Agreement. If DOKA cannot collect this information, it may be unable to process the Customer's credit application. DOKA will only collect, use and disclose Personal Information about such guarantor in accordance with the Privacy Act and DOKA's Privacy Policy.

**40. Additional terms and conditions for Customers of the Online Shop**

In addition to the General Terms and Conditions, the terms and conditions outlined in Annexure 1 of this Agreement shall apply to Customers ordering Goods from the Online Shop in relation to such order.

**41. General**

41.1. These Terms are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia and any courts which may hear appeals from those courts in respect to any proceedings in connection with these Terms.

41.2. These Terms contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.

41.3. Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.

41.4. No waiver of any of these Terms or failure to exercise a right or remedy by DOKA will be considered to imply or constitute a further waiver by DOKA of the same or any other term, condition, right or remedy.

## ANNEXURE 1

### Additional Terms and Conditions of use for Online Shop

In addition to the General Terms and Conditions, the following terms and conditions shall apply to Customers ordering Goods from the Online Shop in relation to such order. In the event of any inconsistency between the clauses of the General Terms and Conditions and the provisions of this annexure, the provisions specified in this annexure shall prevail in respect of Goods ordered from the Online Shop.

#### 1. 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.

#### 2. Data Protection

2.1. The data protection provisions downloadable from <https://shop.doka.com/shop-at/en/dataprivacy/> shall apply and form an integral part of these terms.

2.2. DOKA and DOKA GMBH 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, goods 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 the objection to [shop@doka.com](mailto:shop@doka.com).

#### 3. Registration of customers, authorisations, identity checks and power of representation

3.1. 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.

3.2. Following initial registration, each Customer is assigned a username 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 at the Customer's. DOKA accepts no liability whatsoever with regard to the allocation and use of such authorisations and any internal approval processes in place at the Customer's.

3.3. 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.).

3.4. 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.

3.5. If Customers 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, Customers may register again at any time.

#### 4. Offers, purchase orders, types of payment, conclusion of contract, billing

4.1. All offers made by DOKA shall be non-binding unless explicitly designated as binding. The displayed availability of Goods in the course of the ordering process shall also be non-binding.

4.2. When ordering Goods, Customers shall, in addition to selecting the Goods, 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 Goods 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.

4.3. The payment shall be made either by credit card or upon receipt of the invoice prior to delivery or pickup. Supply of Goods on credit terms is strictly subject to prior approval of DOKA. DOKA may, at its own discretion, insist on payment by credit card. In the case of payment by credit card, the Customer must supply all the relevant credit card information when ordering. The Customer is responsible for ensuring that their 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 interest.

4.4. Once a purchase order has been submitted, the Customer shall receive a preliminary order confirmation. Such a preliminary order confirmation is not deemed to constitute an acceptance of the offer. DOKA shall first 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.

4.5. No order is binding on DOKA until accepted by it.

4.6. A purchase or rental contract for the Goods is binding on DOKA and the Customers only once the purchase order has been expressly accepted by DOKA. Should DOKA fail to supply an express declaration of acceptance, the contract shall become binding as soon as DOKA accepts the Customer's purchase order by making the Goods ready for collection or by delivering the Goods.

4.7. Invoices shall be issued to customers at the billing address specified by the customers.

#### 5. Prices

5.1. All prices in the Online Shop are quoted net, exclusive of GST or any other import / export duties, Ex Works.

5.2. If a valid framework agreement exists between DOKA and the Customer, and if the rental 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 monthly rental price.

- 5.3. All Additional Charges are payable by the Customer in addition to the Price or Equipment Rental Fee of the Goods.
- 5.4. 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.
- 6. Delivery and payment, passing of risk**
- 6.1. Customers may, at their own discretion, select to either collect the Goods or have them delivered to a specified place of delivery.
- 6.2. If the Customers select the option to collect the Goods:
- (a) the Customer shall collect the Goods, at the agreed date and time, from the DOKA branch establishment closest to the address indicated by the Customer or from any other place expressly agreed upon.
  - (b) the Goods shall be handed over to the Customer only once the purchase price and all costs have been paid unless DOKA has agreed to supply them on credit terms prior to the delivery.
  - (c) the risk of loss or accidental damage to the Goods shall pass to the customer upon handover of the Goods to the customer or a third party acting as agent of the Customer.
- 6.3. If the Customers select the option to deliver the Goods:
- (a) provided the price of delivery, type of payment and place(s) of delivery were expressly agreed upon, DOKA shall deliver the Goods.
  - (b) 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.
  - (c) any delivery periods and delivery dates shall be approximate periods and dates.
  - (d) insofar as payment by credit card was agreed with the Customer, delivery shall be effected only after the purchase price has been successfully charged to the customer.
  - (e) supply and delivery of the purchased Goods shall be at the Customer's risk. The risk of loss or accidental damage to the Goods shall thus pass to the Customer upon handover to the carrier.
- 6.4. Should the delivery / ready for collection be exceeded by more than two weeks, the Customer shall, except in cases of a Force Majeure Event, be entitled to rescind the contract.
- 6.5. Should the Customer refuse to accept the delivery of the Goods, the Customer shall ensure that the Goods are returned immediately without unloading or duly unloaded, stored and held at a secured location until they are delivered back to DOKA.
- 6.6. DOKA is entitled to revise the delivery / ready-for-collection date in case of Force Majeure Event or another unforeseeable event.
- 6.7. DOKA shall have the right to make partial deliveries.
- 6.8. 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.
- 6.9. 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.
- 7. Documents, non-disclosure of expertise, ban on reverse engineering, download of documents**
- 7.1. 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.
- 7.2. 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, recreating, replicating the Goods.
- 7.3. 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 Good in question.