



**AT-PAC**

## Terms and Conditions

### Appendix A | Specific Terms and Conditions

#### Prices

All of the prices quoted are in Malaysia Ringgit (RM), new and reconditioned materials and include one-way delivery to site. This offer is valid until 30 days from date of offer.

To the extent permitted by law, the fees quoted is net of taxes and in the event any tax is or becomes applicable on the provision of such goods and/or services, Doka shall be entitled to adjust the fee quote to correspond to the tax so imposed.

All prices stated in this order shall be confidential. You shall not divulge or communicate any information in respect thereof to third parties prior to our written consent.

#### Time of Delivery

Delivery period will be 8-10 weeks after receipt of your firm order with all detailed drawings, clarification of all technical issues and security deposit. Partial shipment should be allowed. Include one-way delivery to site (based on full load of 40' truck).

#### Remarks:

- 1<sup>st</sup> 3 hours upon reaching jobsite: free of charge
- Subsequent idling hours: RM80.00 / hr
- After 8pm to 12am: RM130.00 / hr
- 12am to 8am: RM180.00 / hr

#### Terms of Payment

Upon issuance of purchase order or signing this offer letter, you are required to make a deposit of 1<sup>st</sup> installment payment of RM137,645.25 to Doka Formwork Malaysia Sdn Bhd. We will then follow with payment terms of RM137,645.25 for the additional 5 months with 30 days term after the delivery of materials.

#### Changing Quantities

The actual quantity of scaffold required will depend on several factors. Therefore, please check whether the quantities offered by us suit your program as changes will influence the charges raised. Depending on the construction schedule the quantity of scaffold required may have to be adjusted. The pricing would change accordingly.

#### Design and Calculations

A design fee will be charged for drawings and calculation for typical area. Once the exact requirements of the site have been established in detail, we will supply working drawings for the areas quoted. Any additional drawings/ calculations required for the ongoing job or redesigning of working drawings due to structural changes or construction method will be charged at RM 200.00 per hour.

#### PE's services (if required):

PE's Inspection	:	RM 1,000.00 per trip
PE endorsement	:	RM 5,000.00

#### Technical Assistance

Can be offered at your requirement.

#### Transport Costs

Transport for return and additional materials to project site shall be borne by you and included with 6% SST.

#### Retention of Title

All delivered items remain the property of Doka up to the payment of all receivables of sales price in full.

#### Quality System

Doka has actively pursued quality assurance for more than 25 years now. Over 30 staff members are currently employed in its QA Department. Based on a written testing schedule, systematic quality inspection and testing is performed on incoming goods and at all stages of the production process right through to final assembly. The task of Quality Management is to statistically evaluate the data prior to forwarding it to the responsible managers for the purposes of quality information.

Additional Document(s)

Any additional transaction documents requested, eg tax invoices, delivery notes etc. will incur an extra charge of RM 20 per document.

Not included in our offer

and therefore to be provided by site:

- Assembly, disassembly, removal and resetting of scaffold on site;
- Tubes and fitting for tie backs

## Appendix B | Standard Conditions of Sales & Hire

### Standard Conditions of Sales & Hire

These standard conditions of sales and hire, the specific terms and conditions stipulated in the Quotation (as defined hereunder), together with any documents referred to in these conditions as well as any other additional documents made by the parties pertaining to this sales and hire shall form the agreed terms and conditions between the parties (collectively, referred to as "**this Agreement**").

#### 1 Definitions

In these conditions, unless the context requires otherwise:

- 1.1 'Customer' means the person who buys or agrees to buy and/or hire the goods from the Seller;
- 1.2 'Conditions' means the standard terms and conditions of sales and hire set out in this document;
- 1.3 'Delivery Date' means the date specified by the Seller when the Goods are to be delivered;
- 1.4 'Goods' means the articles which the Customer agrees to buy and/or hire from the Seller;
- 1.5 'Price' means the price for the Goods excluding carriage, packing, insurance and all applicable tax (if any), unless specified otherwise;
- 1.6 'Quotation' means the quotation and/or concluded offer overleaf provided by the Seller to the Customer in relation to the sale or hire of the Goods; and
- 1.7 'Seller' means Doka Formwork Malaysia Sdn. Bhd.

#### 2 Formation of contract

- 2.1 Any order sent to the Seller by the Customer (whether pursuant to the Seller's Quotation or otherwise) shall be accepted entirely at the discretion of the Seller, and, if so accepted, will only be accepted upon these Conditions herein and by means of the Seller's standard Order Acknowledgment Form.
- 2.2 Each order which is so accepted shall constitute an individually legally binding contract between the Seller and the Customer.
- 2.3 These Conditions shall apply to all the sale and/or hire of Goods by the Seller to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the Customer may (subsequently or otherwise) purport to apply under any confirmation of order (whether called a purchase order, works order, letter of intent or letter of award or sub-contract agreement or otherwise) or under any documents or correspondence.
- 2.4 Unless otherwise provided herein, These Conditions shall thereby override and prevail over any inconsistent, contrary, different or additional terms or conditions contained on or referred to in any confirmation of order (whether called purchase order, works order, letter of intent or letter of award or sub-contract agreement or otherwise) or other documents or correspondence from the Customer.
- 2.5 Any addition, alteration, substitution or variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless expressly agreed to in writing by the Seller and the Customer.

#### 3 Quotation

Unless otherwise stated in the Quotation, a Quotation:

- 3.1 is open for acceptance for 30 days from the date of which it was issued;
- 3.2 may be withdrawn at any time before the acceptance and/or placing of an order by the Customer; and
- 3.3 is subject to the availability of Goods at the time it is accepted by the Customer.

#### 4 Orders

- 4.1 The Customer shall be responsible for:
  - 4.1.1 ensuring the quantity, quality and description of the Goods (including any applicable specification for the Goods) is accurately set out in the order; and
  - 4.1.2 giving the Seller any necessary information relating to the Goods as soon as practicable after the date of acceptance of the Quotation to enable the Seller to perform its duties and obligations under this Agreement.
- 4.2 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Customer, the Customer warrants that it is the owner, authorised party and/or licensee of all relevant intellectual property rights of such specifications of the Goods. The Customers shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Customer's specification.
- 4.3 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory requirements or do not materially affect their quality or performance.

#### 5 Price

- 5.1 The Seller reserves the right, by giving written notice to the Customer within a reasonable time before the delivery, to adjust its quoted prices (by not more than fifteen percent (15%) of the Price) to reflect any increase in the cost of the Seller due to:
  - 5.1.1 any factor beyond the control of the Seller (including any foreign exchange fluctuation, currency regulation, alteration of duties, any increase in the cost of labour, materials, and other costs of supply or any increase in the cost of sourcing the Goods);

- 5.1.2 any change in Delivery Date for more than thirty (30) days from the agreed date of delivery; or
- 5.1.3 any delay or expense caused by any instructions of the Customer or failure of the Customer to give the Seller adequate information or instructions.
- 5.2 Subject to Clause 5.1 above, the Price shall be the price referred to in the Quotation and/or as otherwise expressly agreed upon in writing.
- 5.3 Unless otherwise stated in the Quotation or otherwise expressly agreed upon in writing, all Prices of the Goods are on ex works basis. If the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Customer shall be liable to pay the Seller's charges for transport, packaging, insurance and all other costs thereby incurred by the Seller.

## 6 Terms of payment

- 6.1 Payment of the Price and such other costs, including without limited to costs for transport, packaging, insurance, taxes (if applicable), etc shall be due 30 calendar days following the date of the Seller's invoice. Time for payment shall be of the essence. The Customer shall be liable for late payment interest on overdue invoices and such interest shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 1% per month calculated from the date of the invoice until and inclusive of the date of full payment. All costs and expenses incurred by the Seller to recover the outstanding sum shall be borne by the Customer.
- 6.2 The Seller shall issue an invoice to the Customer:
  - 6.2.1 on or any time after the delivery of the Goods;
  - 6.2.2 in the event the Customer fails to give the Seller adequate delivery instructions or failing to take delivery of the Goods, on or at any time after the Seller tenders delivery of the Goods;
  - 6.2.3 in the event the Customer hires the Goods from the Seller, at the end of each calendar-month of hire.
- 6.3 Payment shall be made in Ringgit Malaysia or such other currency to which the Seller may agree. The Price shall be due at the rate of exchange ruling on the date of the Seller's invoice.
- 6.4 The Customer shall make all payments due (including without limited to the Price and all relevant costs and taxes) under this Agreement in full by way of letter of credit or such other mutually agreed manner and without any deduction whether by way of set-off (including equitable set-off), counterclaim, discount, abatement or otherwise.
- 6.5 The Seller shall be entitled to appropriate payment made by the Customer in respect of any Goods in settlement of such invoices or accounts in respect of such Goods as the Seller may in its absolute discretion think fit, notwithstanding any purpose appropriation to the contrary by the Customer.

## 7 The Goods

- 7.1 The quantity and description of the Goods shall be as set out in the Quotation or otherwise expressly agreed to in writing.
- 7.2 All and any design of additional and/or new graphic and/or logo on the Goods shall be agreed in writing by the Seller. The quantity and description of the Goods shall be as set out in the Quotation or otherwise expressly agreed to in writing.

## 8 Technical instructions

- 8.1 The use and maintenance of the Goods is governed by technical instructions issued by the Seller. The Seller shall furnish to the Customer a copy of the technical instructions upon confirming of rental or purchase. Any technical consultation provided by the Seller is limited to an explanation of the technical instructions issued by the Seller.
- 8.2 The Customer acknowledges that it did not rely on any representations which are not set out in the technical instructions (at the time this Agreement came into existence).
- 8.3 The Customer acknowledges that usage of the Goods must be in accordance with the technical instructions given by the Seller and the Customer shall ensure that any person using the Goods is made aware of and complies with the technical instructions (if any) and good trade practice.
- 8.4 The Customer shall indemnify the Seller against all loss, damages, costs and expenses awarded against, incurred, paid or agreed to be paid by the Seller in connection with any claim which arises out of:
  - 8.4.1 the use of the Goods after the Customer is aware or ought to be aware of any defect in the Goods;
  - 8.4.2 any defect in the Goods arising from willful damage, the negligence of any person (other than the Seller), misuse, abnormal working conditions, or alteration or repair of the Goods without the Seller's prior written approval (fair wear and tear excepted);
  - 8.4.3 any use of the Goods (including the installation, disassembly, application, maintenance or removal of the Goods) other than in accordance with the technical instructions (if any) and good trade practice; or
  - 8.4.4 the disposal of the Goods in the circumstance where the Goods are on hire terms.
- 8.5 All rights in the Seller's technical instructions and information remain the property of the Seller.
- 8.6 The Customer shall protect and keep in confidence all the Seller's proprietary software, technical know-how, drawings and all other information and/or materials prudently and diligently by using no less than the same degree of care and safeguard as it uses to protect its own proprietary information and in any event no less than a reasonable degree of care.
- 8.7 The Customer agrees that the licence given by the Seller does not permit, nor provide a license to manufacture or reserve engineer or to have manufactured or reserved engineered any part, component, system or element of the Goods.

## 9 Warranties and liability

- 9.1 The Seller warrants that the Goods supplied will at the time of delivery correspond to the description given by the Seller.
- 9.2 The Seller warrants to the Customer that all of the Goods supplied hereunder will for a fixed period of six (6) months from the Delivery Date be of satisfactory quality **PROVIDED ALWAYS** that this Clause 9.2 shall not apply where:
  - 9.2.1 the Goods have been altered in any way or have been subjected to misuse or unauthorised repair; or
  - 9.2.2 parts, materials or equipment not manufactured by the Seller; or

- 9.2.3 the Goods have been improperly installed, erected or connected; or
- 9.2.4 the Customer has failed to observe any technical instructions issued by the Seller including without limitation any maintenance requirements relating to the Goods; or
- 9.2.5 the Customer has failed to notify the Seller of any defect of suspected defect within the time limit stipulated in these Conditions; or
- 9.2.6 the total Price for the Goods has not been paid by the due date; or
- 9.2.7 the Goods are used item and/or reconditioned item.

Any repaired or replacement Goods will be guaranteed on the same terms as stipulated in this Clause 9.2 for the remaining unexpired term of the six (6) months period.

- 9.3 In the event of a breach of Clause 9.2, the Seller at its own option, and without prejudice to Clause 13.1, within a reasonable period of time repair, replace, repay the price if paid or issue a credit note **PROVIDED THAT:**
  - 9.3.1 the Customer has notified the Seller in writing within 14 days from acceptance of the delivery;
  - 9.3.2 the Customer promptly makes available the Goods for inspection and, if so required, promptly return the Goods affected to the Seller's address, at the Customers sole expense and risk; and
  - 9.3.3 such defects are found to the Seller's reasonable satisfaction to have arisen solely from the Seller's faulty design, workmanship or materials.
- 9.4 Save as expressly referred to above, all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.
- 9.5 The Customer shall indemnify, defend and hold harmless the Seller in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred (but excluding any liability to the extent that it is based on any breach of the Seller's warranty in Clause 9.2) as a result of or in connection with any claim made against the Seller by a third party in respect of any matter caused by the Customer or for which liability has been assumed by the Customer.

## 10 Delivery of the Goods

- 10.1 The Seller will endeavour to deliver the Goods within the time agreed. The Delivery Date and time given by the Seller is given in good faith, but is an estimate only. The Customer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within three (3) months of the Delivery Date.
- 10.2 Delivery of the Goods will be made ex works (in accordance with the latest Incoterms) and the Price is calculated on that basis. For avoidance of doubt, "ex works" refers to any warehouses of Doka Group wherever situate. Accordingly the Customer shall in addition to the Price be liable for paying the full costs of transport, packaging and insurance, where applicable. Where the Customer has agreed to make advance payment for the Goods, delivery shall be conditional upon full payment being made to the Seller.
- 10.3 Unless otherwise agreed the Customer will make arrangements for the carriage of the Goods. The Seller will be deemed to have delivered the Goods if it has made the Goods ready for despatch within the agreed time period. Where the Seller makes arrangements for the carriage of the Goods, delivery will be deemed to have taken place if a carrier collects the Goods prior to the expiry of the agreed time period. In such circumstances the Customer shall be responsible for the unloading of the Goods.
- 10.4 Where the Goods are carried by the Seller's own transport, or by a carrier on behalf of the Seller, and there has been damage to or loss of the Goods, the Customer must notify the Seller of any loss or damage to the Goods within seven (7) days of receipt and the Goods shall be held for inspection to enable a claim to be made on the carrier. Any claim for damaged Goods or shortages or non-delivery shall be notified to the carriers by the Customers in the manner and within the appropriate time limit prescribed by the carriers' terms and conditions. Failing which, the Customer shall be deemed to have accepted the Goods and any claim by the Customer shall be waived and barred.
- 10.5 Where the Customer rejects the Goods pursuant to Clause 10.4 he shall nevertheless be obliged to unload and store the Goods at its own risks.
- 10.6 The Seller may deliver the Goods in different batches. Each batch shall constitute a separate agreement and the termination of any one batch by the Customer as a result of a breach by the Customer will not entitle the Customer to terminate any other batches or this Agreement as a whole.

## 11 Acceptance of the Goods

The Customer shall be deemed to have accepted and satisfied with the Goods seven (7) days after delivery to the Customer. After acceptance the Customer shall not be entitled to reject Goods which are not in accordance with the specifications and this Agreement unless otherwise expressly provided herein.

## 12 Title and risk

- 12.1 Risk of the Goods shall pass to the Customer at the time when the Goods are transferred to the shipper or freight carrier or the Customer himself.
- 12.2 Notwithstanding delivery and passing of risk to the Customer, title to the Goods shall remain with the Seller and shall not pass to the Customer until all payment due under this Agreement (including without limited to the Price and all relevant costs, late payment interest and taxes) and all such sums which are due by the Customer to the Seller on any account have been paid by the Customer to the Seller. Title will not pass to the Customer until all such payments have been received by the Seller and cleared. Notwithstanding that title to the Goods has not passed, the Seller shall be entitled to sue for the Price or part thereof once payment has become due.

12.3 Until full payment is made by the Customer and until such time as title in the Goods has passed to the Customer pursuant to Clause 12.2 above:

- 12.3.1 the Customer holds the Goods as bailee of the Seller and owes to the Seller the normal fiduciary obligations of a bailee by way of custody in respect of the Goods; the Customer will not be entitled to sell the Goods or to convert or incorporate the Goods into any other goods without the express written consent of the Seller the Customer shall maintain the Goods in a satisfactory condition;
- 12.3.2 the Customer shall at the Customer's cost and expense keep the Goods insured on the Seller's behalf for their full price against all risk to the reasonable satisfaction of the Seller;
- 12.3.3 the Customer must store the Goods separately and clearly marked as the Seller's property;
- 12.3.4 the Seller shall have the absolute authority to retake, sell or otherwise deal with or dispose of all, any or part of the Goods in which title remains vested in the Seller;
- 12.3.5 for the purpose of this Clause 12.3, the Customer hereby grants to the Seller, its agents and employees and irrevocable license to enter onto any premises where the Goods are stored or sited in order to repossess them or inspect them at any time and the Customer shall ensure that the owner of the premises where the Goods are located permits the Seller to have access to the premises to inspect and test and remove the Goods and that the owner acknowledges that it has no ownership or other rights to the Goods; and
- 12.3.6 the Seller shall be entitled to seek a court injunction to prevent the Customer from selling, transferring or otherwise disposing of the Goods.

12.4 The Customer shall be responsible for the costs and expenses incurred by the Seller in locating, repossessing, recovering or restoring the Goods.

### 13 Limitation of liability

13.1 The Seller'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 five percent (5%) of the Price of the Goods sold up to the date of the breach.

13.2 Unless expressly otherwise agreed to in writing with specific reference to this Clause 13, under no circumstances shall the Seller 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 labeled 'back-to-back' obligations or otherwise.

13.3 Without prejudice to the generality of the foregoing, unless otherwise expressly agreed to in writing with specific reference to this Clause 13, under no circumstances shall the Seller be liable:

- 13.3.1 for liquidated damages pursuant to the said main contract or sub-contract, as the case may be;
- 13.3.2 to maintain any policies of insurance;
- 13.3.3 to provide any performance bond; or
- 13.3.4 to have any monies withheld on account of any retention fund.

13.4 In any event, and notwithstanding anything contained in this Agreement, in no circumstances whatsoever shall the Seller be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, for:

- 13.4.1 any increased costs or expenses;
- 13.4.2 any loss of profit, business, contracts, revenue or anticipated savings; or
- 13.4.3 any special, indirect or consequential damage of any nature whatsoever

### 14 Insolvency or other default of Customer

14.1 If the Customer fails to make payment for the Goods in accordance with this Agreement or commits any breach of this Agreement or if any distress or execution shall be levied upon any of the Customer's goods or if the Customer offers to make any arrangement with its creditors or if any bankruptcy petition is presented against the Customer or the Customer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Customer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Customer's business or assets or if the Customer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become due and payable to the Seller immediately.

14.2 Upon the occurrence of any of the events mentioned in Clause 14.1, the Seller may in its absolute discretion and without prejudice to any other rights which it may have: suspend all future deliveries of Goods to the Customer and/or terminate the contract without liability upon its part; and/or exercise any of its rights pursuant to this Agreement.

14.3 The Customer shall indemnify the Seller against all costs and expenses incurred by the Seller in enforcing any of its rights in terms of the Contract as against the Customer and recovering the Goods.

### 15 Export

15.1 Where Goods are supplied to the Customer outside Malaysia, payment will be in Ringgit Malaysia or such other currency as may be agreed between the parties. The Customer will establish and maintain in favour of the Seller an irrevocable and confirmed letter of credit in Malaysia with a Malaysia clearing bank payable on drafts drawn at sight upon presentation to the bank by the Seller of a certified copy of the Seller's invoice. Such letter of credit shall be established at least sixty (60) days prior to anticipated shipment date of the Goods and shall cover the full price of the Goods (including applicable taxes) and such letter of credit shall be divisible. All bank charges and other expenses in relation to the letter of credit shall be for the

Customer's account. The Goods will be sold F.O.B., C.F. or C.I.F (in accordance with the latest Incoterms) at the option of the Seller.

15.2 The Customer agrees that it is the obligation of the Customer to ensure that the importation of the Goods into the country of destination are in compliance with any legislation or regulations governing the same including payment of any duties on them.

## 16 Termination

16.1 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 at the time agreed (if any) the Customer shall be liable (without prejudice to any other rights of the Seller to claim damages):

- 16.1.1 to pay the Seller liquidated damages at (a) twenty percent (20%) of the Price should the Goods is a standard item; and/or (b) the total Price should the Goods is a customized or special item; and/or (c) total charges and costs for all services provided by the Seller in connection to the Goods; and
- 16.1.2 to indemnify and keep indemnified the Seller against any resulting loss, damage or expense incurred by the Seller in connection with the supply or non-supply of the Goods.

16.2 If the Seller is unable (whether temporarily or permanently) to procure any services or goods necessary to enable it to supply the Goods or if the supply of Goods is prevented or hindered by reason of any cause beyond the Seller's control, including but not limited to an Force Majeure Event as referred to in Clause 20, the Seller 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 provided that the Customer shall remain liable to pay for Goods supplied prior to the date of such cancellation or suspension.

## 17 Promotional material

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

17.2 The Customer shall allow the Seller to take photographs of the Goods at the Customer's premises for promotional purposes upon the written request of the Seller. The Customer's consent shall not be unreasonably withheld.

## 18 Intellectual property

18.1 The Customer, its employees and representatives shall 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 the Seller.

18.2 In the event of non-observance of Clause 18.1 above, the Seller reserves all rights 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 the Seller's business interest with respect to the Goods and/or any other remedy or relief that may be granted by the Courts.

## 19 Third party rights

A person who is not a party to this Agreement shall have no right to enforce any term of this Agreement.

## 20 Force majeure

20.1 Neither party shall be deemed to be in breach of any obligation of this Agreement (except any obligation of payment) resulting from acts or events beyond that party reasonable control, including but not limited to any act of God, outbreak, epidemic or pandemic of any kind or communicable or virulent disease/infection and any actions taken by any government or public authorities in response to any of the foregoing, any acts of war or terrorism, hostilities (war be declared or not), invasion, act of foreign enemies, strikes, lock out, disorder, any shortage of supply or labour, breakdowns or malfunctions, loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, civil unrest, riots, revolution, rebellion, quarantine of any kind, natural disaster, flood, fire, embargo, boycott, insurrection, explosion, shortage of gas, fuel or electricity, hacker attack, piracy, interruption of transportation, governmental actions and injunctions, change of law, unavoidable accident, failure of any supplier, contractors or subcontractors.

20.2 If a force majeure event occurs, the party affected shall be entitled to postpone the performance that is required to render to the extent and for the period of time that such party is prevented by the event of force majeure. Upon occurrence of such an event, the affected party will make its utmost efforts to notify the other party thereof as soon as practicable.

20.3 If the inability to perform of the affected party shall continue longer than 6 months, the other party may terminate the Agreement by notice with immediate effect. Such termination will not relieve the party from its obligation to pay any amounts accrued or otherwise owed for products or services rendered until termination.

## 21 Notices

21.1 Any notice under or in connection with this Agreement of sale shall be in writing and shall be served by registered post or by hand on the party or sent by recorded delivery or e-mail at or to the address of the party set out in this Agreement or at or to such other address as may be subsequently notified by one party to the other.

21.2 In the absence of evidence of earlier receipt any notice shall be deemed to be duly served:

- 21.2.1 if delivered personally when left at the address stipulated in this Agreement;
- 21.2.2 if sent by recorded delivery three (3) days after posting; and

21.2.3 if sent by e-mail, when received.

**22 Entirety of agreement**

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

**23 General**

- 23.1 Failure by the Seller to enforce any of these Conditions shall not be construed as a waiver of any rights hereunder.
- 23.2 In relation to all obligations of the Customer time of performance is of the essence.
- 23.3 The legal construction of these Conditions shall not be affected by their headings which are for convenience of use only.
- 23.4 If at any time any of these conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal or unenforceable in any respect that shall not affect or impair the legality, validity or enforceability of any other provision of these conditions.
- 23.5 Nothing in these Conditions shall be deemed to constitute a partnership between the Seller and the Customer. The Customer also hereby agrees that under no circumstances shall the Seller be considered the Customer's sub-contractor or agent.
- 23.6 These Conditions shall be subjected to the Specific Terms and Conditions as set out in Quotation, if any. The provisions of Specific Terms and Conditions shall prevail in the event of inconsistency between its provisions and any other provision of these Conditions and/or any other party of this Agreement.

**24 Law and Jurisdiction**

- 24.1 This Agreement is subject to the law of Malaysia.
- 24.2 The parties agree that any dispute or claim arising out of or in relation to this Agreement, or the breach thereof which is:
  - 24.2.1 quantitative in nature shall be submitted to the exclusive jurisdiction of the Malaysia Courts; and
  - 24.2.2 qualitative in nature shall be submitted to arbitration of which the arbitral award shall be in writing and be final and binding on the parties.

**25 Severability**

If any provision of this Agreement is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Agreement and the remainder of the provision concerned will not be affected.

**26 Terms of hire**

In the case of hire of the Goods, the following additional terms of hire shall apply:

- 26.1 The Customer shall pay the Seller a refundable deposit subject to the right of the Seller to deduct the said deposit for loss, damage, and repair of the Goods and offset outstanding payments due by the Customer. The deposit shall be payable upon signing of this Agreement in the form of bank guarantee from the bank acceptable to the Seller.
- 26.2 The delivery must be accepted by the Customer even if there are minor defects, as long as the Seller declares that the Goods are safe to use.
- 26.3 Upon receipt of the Goods the Customer shall inspect them immediately to ensure that they are complete and undamaged.
- 26.4 Missing or faulty parts should be stated on the Seller's Delivery Order (D/O) and the Seller shall be informed immediately and within no more than within two (2) working days from delivery. Otherwise it is assumed that the hired Goods have been received complete and without fault.
- 26.5 As long as the signed copy of D/O is not returned, the Seller is entitled to withhold further deliveries and technical assistance.
- 26.6 Notwithstanding Clause 26.4, defects not immediately evident on reasonable inspection at the time of delivery must be reported in writing when using these Goods the first time, at the very latest. Verbal notification is not sufficient.
- 26.7 The Customer is responsible for the proper handling, dismantling, storage, maintenance and cleaning of the Goods in accordance to the technical instruction provided by the Seller. Loss or damage howsoever caused (excluding fair wear and tear) to the hired Goods will, without prejudice to any other remedies the Customer may have, render the Customer liable to a charge, details of which are available upon request. Damages shall include wear and tear going beyond normal propose use such as breakages, cuts, piercings, drillings or indentations. Nails and screws that have not been extracted are considered damage beyond normal wear and tear.
- 26.8 Hired Goods and/or any parts thereof that cannot be repaired at reasonable cost will be considered beyond repair.
- 26.9 The hired Goods is to be returned at the expense and the risk of the Customer. The hired Goods and equipment must be returned to the Seller complete, in its original technical condition, bundled, palleted and cleaned. Failure to do so shall render the Customer liable to a charge.
- 26.10 The Customer must return the hired Goods together with a Goods Return Note, in the form issued by the Seller. Accessories must be returned together with the main item they had been attached to, otherwise they will be considered missing. Returns of accessories at a later date will not be accepted.
- 26.11 If the hired Goods had been supplied for various structures under different order numbers, the Customer must inform the Seller which particular set of hired Goods he is returning. Otherwise it is the Seller's discretion to decide.

- 26.12 If the Customer mixes the hired Goods with the Customer's own equipment, the Seller's decision as to subsequent separation and identification of the Goods shall be final.
- 26.13 Acceptance of the hired Goods shall take place at the Seller's yard, even if condition and quantities have been checked on the Customer's site.
- 26.14 The Customer shall not part with possession or otherwise charge, pledge or assign the Goods to any third party. Breach of this Clause 26.1.4 shall render the Customer liable to a charge equivalent to the list price of the Goods.
- 26.15 The minimum period of hire is thirty (30) calendar days. The hire shall commence on the day the Goods leave the Seller's storage facility, and shall cease upon the return of the Goods at the Seller's stockyard. In the case of hired Goods to be pre-assembled at the Seller's stockyard, the rental period begins on the day of first assembly.
  
  
  
  
  
- 26.16 The Customer shall pay to the Seller during the rental period the hire charges in the amounts and at the intervals specified by the Seller. Payment shall be made in accordance with Clause 5. Provided that the Customer is not in default of its obligations hereunder, the Customer shall be entitled to terminate the hire on giving the Seller not less than three (3) working days' notice in writing to that effect and by paying such sums as with payments previously made amounting to the total hire charge and by returning the Goods (at the Customer's expense) to the Seller at the Seller's designated premises in good repair and condition which shall be assessed by the Seller. Assessment will be based on the material return criteria of Doka Headoffice. Thereafter, the hire shall be deemed terminated without prejudice to the Seller's right to claim against the Customer for any antecedent breach.
- 26.17 If the Customer (i) fails to pay any hire charges or other sums due in full within fourteen (14) days after the sums have become due or (ii) the Seller has good reason to doubt the Customer's credit worthiness or (iii) the Customer shall do or cause to be done or permit or suffer any act or thing whereby the Seller's rights in the Goods are prejudiced, the Customer shall be deemed to have repudiated any contract and the Seller may thereupon or at any time thereafter accept that repudiation and the contract will terminate forthwith and for all purpose, without prejudice to the Seller's rights under these Conditions.
- 26.18 The risk of the hired Goods is transferred to the Customer at the time when transferred to the freight carrier, even if the freight costs should be borne by the Seller, until the materials are returned to the Seller's stockyard. Shipping costs, freight costs, packing costs and unloading costs are borne by the Customer. Waiting time for loading/unloading exceeding two (2) hours will be charged if the Customer is liable for the delay.
- 26.19 The Customer shall not sub-let or make available to third parties the hired Goods without the consent of the Seller.
- 26.20 The Seller's liability to the Customer in connection to hire of Goods herein, 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 five percent (5%) of the rental of the Goods up to the date of the breach.
- 26.21 For avoidance of doubt, insofar as applicable, these Conditions herein shall be applicable, *mutatis mutandis*, in the case of hire.

## **27 Undertaking and Obligations of Confidentiality**

You and your employees hereby agree undertake and covenant to do all of the following:

- 27.1 to hold the prices and technical solutions but not limited to other sensitive information as Confidential Information in the strictest confidence;
- 27.2 to take all reasonable steps to preserve the confidential and proprietary nature of Confidential Information;
- 27.3 not to disclose or permit to be disclosed at any time any of the Confidential Information or its knowledge of the existence of the Confidential Information or the fact that any similarity exists between the Confidential Information and the independently developed information and materials, to any person whatsoever either directly or indirectly without the prior written consent of the Discloser;
- 27.4 not to use, exploit, process or re-produce or permit to be used, exploited, processes, or re-produced in any manner whatsoever the Confidential Information, in whole or in part, for the purpose other than the Business Arrangement for its own benefit or for the benefit of any other third party. For avoidance of doubt, the Recipient shall be fully responsible for any issues or/and liabilities arising in relation to the Confidential Information due to the breach of the third party;

## Appendix B | Standard Conditions of Services

### Standard Conditions of Services

These standard conditions of services, the specific terms and conditions stipulated in the Quotation (as defined hereunder), together with any documents referred to in the these conditions as well as any other additional documents made by the parties pertaining to this services shall form the agreed terms and conditions between the parties (collectively, referred to as "**this Agreement**").

#### 1 Definitions

In these conditions, unless the context requires otherwise:

- 1.1 '**Customer**' means the person who engages the Service Provider for provision of the Services;
- 1.2 '**Conditions**' means the standard terms and conditions of services set out herein;
- 1.3 '**Fees**' means the service fees for provision of the Services excluding service tax (at the prescribed rate as determined by Applicable Law) and all applicable tax (if any), unless specified otherwise;
- 1.4 '**Quotation**' means the quotation and/or concluded offer overleaf provided by the Service Provider to the Customer in relation to the Services;
- 1.5 '**Services**' means the design services, technical assistance, repair and maintenance services to be provided by the Service Provider to the Customer and more particularly described in the Quotation; and
- 1.6 '**Service Provider**' means Doka Formwork Malaysia Sdn. Bhd.
- 1.7 '**Term**' means the tenure for provision of Services by the Service Provider to the Customer in accordance to this Agreement.

#### 2 Formation of Contract

- 2.1 Upon acceptance of the Quotation, this Agreement shall be formed and the Service Provider shall perform the Services to the Customer in accordance to these Conditions.
- 2.2 Unless otherwise provided herein, these Conditions shall thereby override and prevail over any inconsistent, contrary, different or additional terms or conditions contained on or referred to in any confirmation of Quotation (whether named as purchase order, works order, letter of intent or letter of award or sub-contract agreement or otherwise) or other documents or correspondence from the Customer.
- 2.3 Any addition, alteration, substitution or variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless expressly agreed to in writing by the Service Provider and the Customer.

#### 3 Fees

- 3.1 In consideration of the Service Provider's agreement to undertake and perform the Services, the Customer hereby agrees to pay the Service Provider the Fee.
- 3.2 The Service Provider reserves the right, by giving written notice to the Customer within a reasonable time before commencement of the Services, to adjust its quoted Fee (by not more than fifteen percent (15%) of the Fees) to reflect any increase in the cost of the Service Provider due to any factor beyond the control of the Service Provider (including any foreign exchange fluctuation, currency regulation, alteration of duties, any increase in the cost of labour, materials, and other costs of Services).
- 3.3 The Service Provider shall issue an invoice to the Customer on a progressive basis or monthly basis. Fees shall be paid in Ringgit Malaysia or such other currency to which the Service Provider may agree.
- 3.4 Payment of the Fees and such other costs, including without limited to the service tax (if applicable), etc shall be due thirty (30) days following the date of the Service Provider's invoice.
- 3.5 The Customer shall be liable for late payment interest on overdue invoices and such interest shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 1% per month calculated from the date of the invoice until and inclusive of the date of full payment. All costs and expenses incurred by the Service Provider to recover the outstanding sum shall be borne by the Customer.
- 3.6 Notwithstanding anything contrary provided herein, the Service Provider reserves all its right to suspend, withhold and/or discontinue all and any Services to the Customer in the event the Customer fails to pay the Fees and/or any other payment(s) pursuant to this Agreement.

#### 4 The Services

- 4.1 The Service Provider shall provide services to the Customer and the description of the Services shall be as set out in the Quotation or otherwise expressly agreed to in writing.
- 4.2 The Customer may request for modifications of the scope of Services Provided Always That in the event the working staff time spent on such modifications shall be exceeding two (2) working hours, the Customer shall pay to the Service Provider additional fees on attendance basis and to be agreed upon by the Parties. The time spent on the modification of Services shall be determined solely by the Service Provider.
- 4.3 The Service Provider shall as it deems fits furnish necessary technical instructions and information to the Customer in the course of performance the Services.
- 4.4 The Customer shall protect and keep in confidence all the Service Provider's proprietary software, technical know-how, drawings and all other information and/or materials prudently and diligently by using no less than the same degree of care and safeguard as it uses to protect its own proprietary information and in any event no less than a reasonable degree of care.
- 4.5 The Customer shall appoint one single point of contract being the person-in-charge for all relevant matters in relation to the Services and all related works herein. Service Provider's instruction obligations refer only to the said person-in-charge.
- 4.6 Service Provider is not responsible to supervise the Customer's workers and their work and is not obliged to render instructions.

4.7 The Customer must provide all conditions necessary for Service Provider to perform its services, including but not solely, tools and equipment safe to use, sufficient workforce, light, and authorizations, if required.

## 5 Term

This Agreement shall, unless otherwise terminated earlier in accordance to the Conditions herein, be valid and subsisting throughout the Term.

## 6 Warranties & Undertakings

6.1 The Service Provider hereby warrants, represents and undertakes that:

- 6.1.1 It shall perform the Services in accordance to the descriptions as set forth in the Quotation and instructions given by the Customer
- 6.1.2 it has the experience and ability to perform the Services in accordance to this Agreement;
- 6.1.3 it shall use its best endeavour to provide the necessary technical advisory services and operations advice in relation to the Services;
- 6.1.4 it shall employ sufficient number of competent and qualified personnel to perform and provide the Services in a proper and efficient manner throughout the Term;
- 6.1.5 it shall provide a timely response to the request, complaint and/or any form of communication from the Customer.

6.2 The Customer hereby warrants, represents and undertakes that:

- 6.2.1 it shall provide all necessary assistance and cooperation to the Service Provider to ensure that performance of the Services can be completed timely and efficiently; and
- 6.2.2 it shall provide all necessary information, data and/or content whatsoever form to the Service Provider to permits the performance of the Services.

6.3 The Parties each represents and warrants as follows:

- 6.3.1 each Party has full power, authority, and right to perform its obligations under this Agreement;
- 6.3.2 this Agreement shall form a legal, valid, and binding obligation of each Party and shall be enforceable against it in accordance with terms and conditions herein contained; and
- 6.3.3 entering into this Agreement shall not violate the memorandum and articles of associations of either Party or any material contract to which that Party is a party or any applicable laws, rules, or regulations.

## 7 Limitation of liability

7.1 To the extent permitted by the laws, the Service Provider'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 five percent (5%) of the Fees of the Services.

7.2 Under no circumstances shall the Service Provider be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, for:

- 7.2.1 any special, indirect or consequential damage of any nature whatsoever;
- 7.2.2 any increased costs or expenses; or
- 7.2.3 any loss of profit, business, contracts, revenue or anticipated savings.

7.3 Service Provider accepts responsibility for the compliance of its goods and services with the recognized rules of engineering / architecture that are valid at the time at which the service is performed.

## 8 Delay

8.1 The Service Provider shall inform the Customer immediately of any anticipated delay in the delivery schedule and of any remedial actions being taken to ensure completion of the Services.

8.2 The Parties agree that in the event any delay is caused by an action or failure of action of the Customer, such delay shall not constitute a breach of the Service Provider and the Service Provider cannot be held in breach of this Agreement. In such case, the Service Provider shall provide the Customer with written notice of the delay until the reason for the delay has been resolved by the Customer and written notice of that resolution has been provided to the Service Provider.

## 9 Force Majeure

9.1 Neither party shall be deemed to be in breach of any obligation of this Agreement (except any obligation of payment) resulting from acts or events beyond that party reasonable control, including but not limited to any act of God, outbreak, epidemic or pandemic of any kind or communicable or virulent disease/infection and any actions taken by any government or public authorities in response to any of the foregoing, any acts of war or terrorism, hostilities (war be declared or not), invasion, act of foreign enemies, strikes, lock out, disorder, any shortage of supply or labour, breakdowns or malfunctions, loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, civil unrest, riots, revolution, rebellion, quarantine of any kind, natural disaster, flood, fire, embargo, boycott, insurrection, explosion, shortage of gas, fuel or electricity, hacker attack, piracy, interruption of transportation, governmental actions and injunctions, change of law, unavoidable accident, failure of any supplier, contractors or subcontractors.

9.2 If a force majeure event occurs, the party affected shall be entitled to postpone the performance that is required to render to the extent and for the period of time that such party is prevented by the event of force majeure. Upon occurrence of such an event, the affected party will make its utmost efforts to notify the other party thereof as soon as practicable.

9.3 If the inability to perform of the affected party shall continue longer than fourteen (14) days due to Force Majeure, the other party may terminate the Agreement by notice with immediate effect. Such termination will not relieve the party from its obligation to pay any amounts accrued or otherwise owed for products or services rendered until termination.

## 10 Intellectual Property

10.1 The Customer, its employees and representatives shall not copy, re-produce, 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 technical instructions or guides furnished and/or provided by the Service Provider without the prior written consent of the Service Provider.

10.2 In the event of non-observance of Clause 10.1 above, the Service Provider reserves all rights 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 the Service Provider's business interest with respect to the Goods and/or any other remedy or relief that may be granted by the Courts.

**11 Notices**

- 11.1 Any notice under or in connection with this Agreement of sale shall be in writing and shall be served by registered post or by hand on the party or sent by recorded delivery or e-mail at or to the address of the party set out in this Agreement or at or to such other address as may be subsequently notified by one party to the other.
- 11.2 In the absence of evidence of earlier receipt any notice shall be deemed to be duly served:
  - 11.2.1 if delivered personally when left at the address stipulated in this Agreement;
  - 11.2.2 if sent by recorded delivery three (3) days after posting; and
  - 11.2.3 if sent by e-mail, when received.

**12 Entirety of agreement**

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

**13 General**

- 13.1 Failure by the Service Provider to enforce any of these Conditions shall not be construed as a waiver of any rights hereunder.
- 13.2 The legal construction of these Conditions shall not be affected by their headings which are for convenience of use only.
- 13.3 If at any time any of these conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal or unenforceable in any respect that shall not affect or impair the legality, validity or enforceability of any other provision of these conditions.
- 13.4 Nothing in these Conditions shall be deemed to constitute a partnership between the Service Provider and the Customer. The Customer also hereby agrees that under no circumstances shall the Service Provider be considered the Customer's sub-contractor or agent.
- 13.5 These Conditions shall be subjected to the Specific Terms and Conditions as set out in Quotation, if any. The provisions of Specific Terms and Conditions shall prevail in the event of inconsistency between its provisions and any other provision of these Conditions and/or any other party of this Agreement.

**14 Law and Jurisdiction**

- 14.1 This Agreement is subject to the law of Malaysia.
- 14.2 The parties agree that any dispute or claim arising out of or in relation to this Agreement, or the breach thereof which is:
  - 14.2.1 quantitative in nature shall be submitted to the exclusive jurisdiction of the Malaysia Courts; and
  - 14.2.2 qualitative in nature shall be submitted to arbitration of which the arbitral award shall be in writing and be final and binding on the parties.

**15 Severability**

If any provision of this Agreement is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Agreement and the remainder of the provision concerned will not be affected