

# General Terms and Conditions

## THE SUPPLIER'S GENERAL TERMS & CONDITIONS OF SALE, DELIVERY AND PAYMENT

### 1. DEFINITIONS

- 1.1 "Business Day" means a day (other than a Saturday or Sunday or public holiday) when banks in London are open for business;
- 1.2 "Customer" means the person, firm or company or hirer who buys/hires or who agrees to buy/hire the Goods from the Supplier;
- 1.3 "Conditions" means the Supplier's General Terms and Conditions of Sale, Delivery and Payment, the Supplier's Supplementary Terms and Conditions of Delivery regarding Rental and the Additional Terms and Conditions for Repair and Other Services as set out in this document and any other special terms and conditions agreed in writing by the Supplier (as amended from time to time in accordance with clause 2.4);
- 1.4 "Contract" means the contract between the Supplier and the Customer for the sale or hire of the Goods in accordance with these Conditions;
- 1.5 "Delivery Date" means the date specified by the Supplier when the Goods are to be delivered;
- 1.6 "Goods" means the articles which the Customer agreed to buy/hire from the Supplier set out in the Order;
- 1.7 "Hirer" means the person, firm or company who agrees to hire the Goods from the Supplier;
- 1.8 "Order" means the Customer's order to hire or purchase the Goods and/or order a supply of the Services, as set out in the Supplier's purchase order form or in the Customer's written acknowledgement of the Supplier's quotation as the case may be;
- 1.9 "Price" means the price for the purchase of the Goods on the basis of labour and material costs prevailing at the date of submission pursuant to clause 4.2 (excluding carriage, packing, insurance and VAT);
- 1.10 "Services" means the services agreed to be supplied by the Supplier to the Customer as agreed in the Order; and
- 1.11 "Supplier" means MEVA Formwork Systems Limited (Company No. 05687437), a company incorporated in England whose registered office is at Palmerston House, 814 Brighton Road, Purley, Surrey, CR8 2BR.

### 2. CONDITIONS APPLICABLE

- 2.1 These conditions shall apply to all contracts for the sale and/or hire (where applicable) of Goods by the Supplier to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order or acknowledgement of quotation or similar document or which are implied by trade, custom, practice or course of dealing.
- 2.2 All orders for Goods shall be deemed to be an offer by the Customer to purchase and/or hire the Goods pursuant to these Conditions. The Customer is responsible for ensuring that the terms of the order are complete and accurate. The Order shall only be deemed accepted when the Supplier issues a written acceptance. Such acceptance shall be a condition precedent to this Contract and shall be and take effect only on the terms of this Contract. A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.
- 2.3 Acceptance of delivery of the Goods by the Supplier to the Customer pursuant to this Contract shall be deemed conclusive evidence of the Customer's acceptance of these Conditions as will the Customer's signature on any order form.
- 2.4 Any variation to these Conditions (including special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing and signed by the Supplier.
- 2.5 The Contract constitutes the entire agreement between the parties and supersedes all previous agreements and understandings between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

### 3. COPYRIGHT

- 3.1 Any cost estimates, specimens, samples, drawings or other documents or advertising produced by the Supplier and any descriptions or illustrations in the Supplier's catalogues or brochures, are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 3.2 The specification and design of the Goods and any cost estimates, specimens, samples, drawings, illustrations or other documents (including the copyright, design right and other intellectual property in the Goods) shall, as between the parties, be the property of the Supplier. They may not be made available to third parties. All such documents shall be returned immediately upon request if the Supplier has not accepted the Customer's Order.
- 3.3 The assumption of guarantees and a purchasing risk shall presuppose written agreements by the parties in which express reference is made to the

specific meanings of the guarantees and purchasing risk.

- 3.4 If the Supplier is unable to perform its obligations after the conclusion of the contract as a result of the occurrence of unforeseeable and unusual circumstances which could not be avoided despite all the reasonable care to be expected in the relevant circumstances of the parties case, especially production stoppages, operational sanctions and interventions, delays with the delivery of major raw materials and energy supply difficulties, etc, the delivery period shall be extended in line with the aforesaid effects. If delivery is impossible on account of the aforesaid circumstances, the Supplier shall be released from its delivery obligations and commitments. The aforesaid ruling shall also apply accordingly in the event of lockouts and strikes.
- 3.5 If the aforesaid impediments last longer than one month, both parties shall be entitled to withdraw from the contract with regard to the unfulfilled part thereof. Compensation claims by the Customer shall be excluded in such cases. The Supplier shall only be entitled to invoke the aforesaid circumstances if it immediately informed the Customer of the aforesaid circumstances immediately after their occurrence.

### 4. PRICES, PAYMENT AND SECURITY

- 4.1 All prices shall be excluding the costs of packaging, freight and delivery of the Goods, customs duties and insurance which shall be invoiced to the Customer. The price of the Goods is exclusive of amounts in respect of value added tax at the applicable statutory rate. The Customer shall on receipt of a valid VAT invoice from the Supplier, pay to the Supplier shall additional amounts in respect of VAT as are chargeable on the supply of the Goods. Packaging material is not returnable.
- 4.2 All prices listed or quoted by the Supplier are based on costs prevailing at the time when those prices are published or otherwise stated. The Supplier shall be entitled to adjust the Price payable by the Customer by giving notice to the Customer at any time on or before delivery of the Goods, to reflect such additional amount as may be necessary to take account of any increase in costs due to any factor beyond the Supplier's control (including without limitation in relation to foreign exchange fluctuations, increases in taxes and duties, increases in labour, materials and other manufacturing costs whether direct or indirect) involved in creating, acquiring, handling or supplying the Goods, where such costs are sustained by the Supplier after the Supplier has accepted the Customer's Order.
- 4.3 Although the Price agreed for the Goods excludes the Supplier's normal delivery charges, the Supplier reserves the right to make a charge for delivery of the Goods at the delivery charging rates as notified to the Customer from time to time. The Supplier reserves the right to make an additional administration and/or handling charge at the Supplier's hourly rate as notified to the Customer from time to time, if the Supplier incurs costs or expenses exceeding that which the Supplier reasonably expected to incur or for matters not expressly set out in the Order or as a result of a variation of the Order. This right is without prejudice to any other rights or remedies to which the Supplier might be entitled.
- 4.4 The additional costs and expenses referred to in clause 4.3 shall include (but shall not be limited to) those that are occasioned by:
  - (a) any request by the Customer to change the delivery date, quantities or type of Goods ordered;
  - (b) the Supplier's compliance with the Customer's request for delivery outside the Supplier's normal delivery pattern or trading hours or by instalments;
  - (c) the Customer's failure to take or accept delivery;
  - (d) the Customer's keeping the Supplier's delivery vehicle waiting for an unreasonable time or causing the Supplier's delivery vehicle to return without completing delivery;
  - (e) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions; and
  - (f) the ordering by the Customer of Goods of such a small value that it is not economic for the Supplier to deliver without making a delivery charge additional to the normal delivery charges referred to in clause 4.3.
- 4.5 The Supplier may also charge an independent charge to the Customer where the Supplier, either at the request of the Customer or acting in good faith at the Supplier's own discretion, provides additional staff to unload the Goods.
- 4.6 The Customer shall indemnify the Supplier in respect of all costs, claims, losses or expenses that the Supplier might incur in consequence of the Supplier's delivery of the Goods in accordance with the Customer's instructions. The quantum of the said indemnity shall however diminish in proportion to the extent that the said costs, claims, losses or expenses are attributable to the Supplier's negligence.
- 4.7 Deliveries to the building site notified by the Customer shall presuppose appropriate access shall be made by the Customer for the Supplier to deliver the ordered Goods. The Customer undertakes to provide the necessary labour for unloading the Goods and to ensure that unloading is to be completed within a reasonable time.

4.8 Unloading the delivery vehicle shall in all cases be the responsibility of the Customer at its own risk and cost. If any transport is required to or from the unloading point notified by the Customer, the Customer shall ensure that the aforesaid unloading point can also be reached by heavy load vehicles in the event of bad weather and that it is duly and properly cleared. The loading and unloading of the transport vehicles outside the Supplier's production units is the responsibility of the Customer.

4.9 The Supplier shall be entitled to credit incoming payments from the Customer against older debts first of all and shall inform the Customer of the corresponding accounting treatment (if applicable). If costs and interest have been incurred, the Supplier shall be entitled to credit the payment to costs, then to interest charges and finally to the main claim.

4.10 Bills of exchange and cheques shall only be accepted as conditional payment and only after prior express written agreement on the Supplier's part. Discounting charges and bill expenses shall also be for the account of the Customer in the absence of a separate agreement and shall be payable with immediate effect.

4.11 If the Customer delays payment or if a cheque is dishonoured or if a bill of exchange is rejected, the Supplier shall be entitled to make the whole of the outstanding claim due for immediate payment and require payment in advance of any delivery not yet made and/or entitle the Supplier not to make any delivery. The Supplier shall then be entitled to make all valid claims arising from the business relationship with the Customer due with immediate effect.

4.12 Only counterclaims which are undisputed or which have been established by a judgment adjudicated by a court of competent jurisdiction shall entitle the Customer to offset the relevant amounts. Retention rights shall be excluded in all cases.

4.13 The Supplier shall not be obliged to provide any guarantee or contract performance securities, especially contract performance guarantees.

4.14 Invoices shall not be subject to cash discounts.

4.15 The Supplier may invoice the Customer for the Goods on or at any time after the Supplier has accepted the Customer's offer OR on or at any time after the completion of delivery. Payments shall be due within 30 days' of the date of the relevant invoice. Payment of the invoice shall be made in full and in cleared funds. Time of payment is of the essence. If rent is payable, the invoice shall be issued monthly in arrears unless otherwise agreed in writing by the Supplier.

4.16 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum over the Bank of England base lending rate, prevailing at that time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment adjudicated by a court of competent jurisdiction. The Customer shall pay the interest together with the overdue amount.

4.17 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

4.18 The Supplier shall be immediately be informed of any pledges or any other interference by any third parties.

## 5. THE GOODS

5.1 The description of the Goods shall be set out in the Supplier's purchase order form, standard acknowledgement of purchase order form, quotation or tender. The Customer acknowledges and agrees that any description which is given or applied to the Goods:-

- (a) is solely for purposes of references and does not constitute or afford the basis for any express or implied undertaking that the Goods correspond with or conform to such reference; and
- (b) shall not make this Contract a sale by description; and
- (c) is not and has not been relied upon by the Customer when entering into this Contract.

## 6. DELIVERY PERIODS AND PART DELIVERIES

6.1 The Supplier shall make every effort to comply with the agreed delivery periods. Particulars regarding a delivery period shall nonetheless be basically non-committal. Delivery dates and times quoted by the Supplier are given in good faith but are estimates only and their observance shall not be of the essence of the Contract. The Supplier's failure to conform to delivery dates and times shall not give rise to any liability on the part of the Supplier (whether in respect of direct or indirect losses alleged to be suffered by the Customer) except where the Supplier did not intend, when quoting such dates or times, to make reasonable efforts to conform to them. Proof of such absence of intention on the part of the Supplier shall rest with the Customer.

6.2 The Supplier shall be entitled to make part deliveries subject to any express variation of the Contract which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in any instalment shall not entitle the Customer to cancel any other Contract or instalment.

6.3 For the purposes of this Contract, the Goods shall be deemed to have

been delivered to the Customer when (pursuant to a notification issued by the Supplier that the Goods are to be transported to the agreed premises or other destination point of the Customer) the Goods:

- (a) leave the physical confines of the Supplier's premises; or
- (b) leave the physical confines of the premises of the Supplier's suppliers, in a situation where the Goods are to be delivered direct from such suppliers; irrespective in each case of whether the Goods are to be delivered to the Customer by the Supplier or by an independent carrier.

6.4 If the Customer fails to accept delivery of the Goods within 5 Business Days of the Supplier notifying the Customer that the Goods are ready for delivery (or such other extended delivery period agreed in writing by the Supplier), then, except where such failure or delay is caused by a force majeure event or the Supplier's failure to comply with its obligations under this Contract:-

- (a) delivery of the Goods shall be deemed to have been completed at 9.00am on
  - (i) the fifth Business Day after the day on which the Supplier notified the Customer that the Goods were ready; or
  - (ii) the last Business Day of the extended delivery period agreed to in writing by the Supplier pursuant to this clause; and
- (b) the Supplier shall store the Goods until delivery takes place and reserves the right to charge the Customer for all related costs and expenses (including insurance and storage costs).

6.5 If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery pursuant to clause 6.4, the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and after deducting reasonable storage and selling costs, account to the Customer for any excess over the Price of the Goods or charge the Customer for any shortfall below the Price of the Goods. In such an event should the Customer wish to repurchase the Goods, the Supplier reserves the right to adjust the Price payable by the Customer to reflect such additional amount as may be necessary to take account of any increase in costs due to any factor beyond the Supplier's control (including without limitation in relation to foreign exchange fluctuations, increases in taxes and duties and increases in labour, materials and other manufacturing costs whether direct or indirect).

## 7. FORCE MAJEURE

7.1 If the Supplier is unable to perform its obligations after the conclusion of the Contract as a result of the occurrence of unforeseeable and unusual circumstances or that result from circumstances beyond the reasonable control of the Supplier, which could not be avoided, despite all the reasonable care to be expected in the relevant circumstances of the parties case, including without limitation production stoppages, operational sanctions and interventions, delays with the delivery of major raw materials and energy supply difficulties, the Supplier shall promptly notify the Customer in writing

- (a) when the occurrence of any circumstance causes or can reasonably be expected to cause or to threaten to cause, a delay, a revision or failure in performance; and
- (b) when any such circumstances ceases to do so.

7.2 If the aforesaid impediments last for a continuous period of more than one month, both parties shall be entitled to withdraw from the Contract with regard to the unfulfilled part thereof. Neither party shall be liable for any failure or delay in performance of its obligations under the Contract to the extent that such failure or delay is caused by any such circumstance.

## 8. TRANSFER OF RISK, NOTIFICATION OF DEFECTS, GENERAL WARRANTY AND DAMAGE COMPENSATION

8.1 The risk in the Goods shall pass to the Customer as soon as the consignment has been handed over to the transport company/when it has left the Supplier's works or on completion of the unloading of the Goods at the agreed premises or other destination point of the Customer.

8.2 The Customer acknowledges and agrees:

- (a) that the Customer has had a reasonable opportunity to inspect the Goods before signing or taking receipt of the Supplier's delivery note;
- (b) that the Customer has inspected the Goods before signing or taking receipt of the Supplier's delivery note;
- (c) that the Customer has satisfied itself as to the condition of the Goods before signing or taking receipt of the Supplier's delivery note;
- (d) that save for Warranties at clause 8.4, the Supplier gives no representation or undertaking and shall be bound by no condition, warranty, innominate term or other obligation (whether express or implied and whether imposed or implied by statute, at common law or otherwise) concerning the condition, quality, physical state or attributes, location, origin, fitness or suitability for any purpose, or conformity with any description or sample of the Goods;
- (e) all liability on the part of the Supplier in respect of the matters referred to in clause 8.2(d) is excluded; and
- (f) the Customer undertakes not to bring any claim or resort to any proceedings in respect of the matters referred to in clause 8.2(d).

8.3 This clause shall also apply (where applicable) to rented equipment. In the event of larger delivered quantities of the same Goods, the whole delivered

batch may only be rejected as defective if the defects were established by means of a recognised and representative sampling test procedure.

8.4 Warranty claims of the Customer will only be considered within one year of the transfer of risk. The Supplier warrants that the Goods shall:

- (a) conform in all material respects with their description;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by the Supplier.

8.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 8.4 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 8.4;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, abnormal storage or working conditions;
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
- (g) the Goods differ from their description as a result of changes made which has not affected the proper functioning of the Goods.

8.6 Except as provided in clause 8.9:-

(a) the Supplier shall not be liable to the Customer whatsoever, in respect of any breach of the Supplier's obligations arising under or in respect of this Contract

(i) irrespective of whether the breach on the part of the Supplier arises or is alleged to arise in contract, tort, bailment, negligence, breach of statutory duty or otherwise; and

(ii) irrespective of the nature of the loss, damage, costs or expenses resulting to the Customer from the said breach, and in particular irrespective of whether such loss, damage, cost or expense:

(A) flows directly from the breach without any intervening cause and independently of special circumstances; or

(B) is of an indirect or consequential nature, including (without limitation and without excluding from the ambit of this clause 8 direct losses) the following:

1. loss or deferment of profit,
2. loss or deferment of revenue,
3. loss of goodwill,
4. loss of business,
5. loss or deferment of production or increased costs of production.

(b) the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

8.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

8.8 The Suppliers products may only be assembled in accordance and in compliance with the relevant assembly and operating instructions which the Customer shall receive for free. Any use of the Goods together with the components of the Customer or components of other manufacturers shall be exclusively at the risk of the Customer. Liability on the part of the Supplier in the aforesaid respect shall be excluded.

8.9 No liability shall be assumed from the fact that the elements included in the Supplier's indication of compliance with the relevant safety standards are complete with regard to the proposed use of the formwork or shuttering. In addition, no liability shall be assumed for any security, health and risk related coordination plan of the Customer, especially with regard to the assembly instructions, risk analyses and any other security related data.

8.10 Regardless of the basis of the claim, the Supplier shall only be liable for property and financial damages and personal injuries within the scope of its existing liability insurance. The cover amount for personal injuries and property damages is a flat rate GBP 5 million. If and to the extent to which the insurer is freed from the obligation to pay (percentage excess, serial damage, annual limit, risk exclusion), the Supplier shall compensate with a replacement of its own.

8.11 If the Supplier is entitled to demand compensation for lost profits, the aforesaid profit shall be assumed at 25% of the agreed net delivery price or 25% of the agreed net rent for the whole rental period. A specific enforcement of higher damages shall not be affected thereby. The Customer shall have the right to prove that a lower level of damages has been incurred.

## 9. WARRANTY AND PRODUCT LIABILITY (INCLUDING WITH EXPORTS)

9.1 The Supplier shall be liable for ensuring the compliance of its products with English construction and safety regulations. An additional warranty for

compliance with foreign regulations shall only be assumed in the event of an express written agreement by the Supplier in a specific case. The Supplier's products are not intended for export to third countries by the Customer.

9.2 Any recourse claims by the Customer against the Supplier in third countries outside the EU shall be determined exclusively under English Law and the relevant applicable EU regulations to the exclusion of the application of the laws of third countries.

9.3 If damage compensation claims are lodged against the Supplier by third parties based on the laws of a third country and if the Supplier has no liability to the direct contracting party to pay the aforesaid claims under current law, the Supplier shall be entitled to seek indemnification from the Customer if the Customer exports the Supplier's products in third countries with an extended liability without written express agreement.

## 10. PRODUCT MONITORING AND PRODUCT WARNING OBLIGATION

10.1 In order to ensure protection against risks of all kinds caused by the delivered goods, the Customer shall be obliged to monitor the Supplier's products on an ongoing basis from a safety related point of view (product monitoring obligations). If it is identified that a Supplier product is the cause of risks, the Customer shall be obliged to notify the Supplier thereof immediately in writing (product warning obligation).

10.2 If claims are lodged against the Supplier on account of a breach of the product monitoring obligations and/or product warning obligations and if the aforesaid product monitoring obligation and/or product warning obligation is attributable to a breach of the product monitoring and/or product warning obligation on the part of the Customer, the Customer shall compensate the Supplier for the damages incurred by the Supplier on account of the breach of obligation on the part of the Customer.

## 11. COLLABORATION OBLIGATIONS OF THE CUSTOMER/PLEDGING RIGHTS

11.1 If any of the Goods of the Customer are returned to the Supplier for repair or an overhaul, the Supplier shall endeavour to collect the relevant Goods within one week of notification by the Customer of their readiness to dispatch. Upon completion of such repair, the Supplier shall notify the Customer that the relevant Goods are ready for re-delivery to the original place of delivery. If the Customer fails to accept re-delivery of the repaired Goods within 5 Business Days of such notification, the Customer shall be in acceptance delay after the end of the aforesaid period. The Supplier shall then be entitled to charge storage costs at the rates customary within the industry.

11.2 Repaired or replacement Goods shall:

- (a) be delivered to the Customer at the original place of delivery; and
- (b) be subject in all other respects (mutatis mutandis) to the provisions of this Agreement, and
- (c) in particular, without limitation, the Supplier undertakes no responsibility for the condition, quality, physical state or attributes, location, origin, fitness or suitability for any purpose, or conformity with description or sample, of such repaired or replacement Goods or any portion, part or component of them.

11.3 In the event that the Customer has already paid the Price when the Customer notifies the Supplier of any claimed defect in the Goods to the Supplier, the Supplier may, at its exclusive and unqualified discretion:

- (a) refund the Price of the Goods to the Customer; and thereafter
- (b) recover possession of the Goods from the Customer.

11.4 The redress afforded by this clause 11 is without prejudice to the other provisions of this Agreement.

11.5 Title in the Goods shall not pass from the Supplier to the Customer until the earlier of:-

- (a) payment of the Price in full (in cash or cleared funds) for the Goods; and
- (b) any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time payment of all such sums.

11.6 Until title in the Goods passes to the Customer in accordance to clause 11.5 the Customer shall store the Goods (at no cost to the Supplier) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Supplier's property. The Customer shall not remove, deface or obscure any identifying mark or packaging on or relating to the Goods. The Customer shall maintain the Goods in a satisfactory condition and keep them insured against all risks for their full price from the date of delivery. The Customer may use the Goods in the ordinary course of its business but shall not resell the goods and shall not mix the Goods with any other goods or equipment of the Customer or alter them in any way. The Customer shall notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.2 and shall give the Supplier such information relating to the Goods as the Supplier may require from time to time.

11.7 Until such time as title in the Goods passes from the Supplier to the Customer and the Customer becomes subject to any of the events listed in clause 14.2, then without limiting any other right or remedy the Supplier may have, the Supplier may at any time demand the Customer delivers up

the Goods in the Customer's possession or control to the Supplier free from any damage or defect. If the Customer fails to do so, the Supplier may enter upon any premises owned, occupied or controlled by the Customer or any third party where the Goods are situated and repossess the Goods. If the Goods are damaged as a result of any negligence, misuse, mishandling of the Goods or otherwise caused by the Customer or its officers, employees, agents or contractors, the Customer undertakes to be responsible for and to indemnify the Supplier on demand against the same and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of this agreement or from whatever cause arising.

11.8 The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Supplier. Without prejudice to the other rights of the Supplier, if the Customer breaches this obligation all sums whatever owing by the Customer to the Supplier shall forthwith become due and payable.

11.9 The Customer shall insure and keep insured the Goods to the full price against "all risks" to the reasonable satisfaction of the Supplier until the date that title in the Goods passes from the Supplier and shall whenever requested by the Supplier produce a copy of the policy of insurance. Without prejudice to the other rights of the Supplier, if the Customer fails to do so all sums whatever owing by the Customer to the Supplier shall forthwith become due and payable.

## 12. FINAL PROVISIONS AND LEGAL VENUE

12.1 The place of performance for payments is Intergest, Palmerston House, 814 Brighton Road, Purley, Surrey, CR8 2BR and deliveries is Tamworth.

12.2 These Supplier's General Terms and Conditions of Sale, Delivery and Payment and the whole legal relationship between the Customer shall be governed by the laws of England and Wales to the exclusion of the UN Convention on the International Sale of Goods (CISG).

12.3 The exclusive legal venue for all contractual relationships with registered traders is the competent court for the Supplier's domicile or the legal venue of the Customer at the option of the Supplier.

12.4 Any ancillary agreements, reservations, modifications and supplemental agreements shall require the written confirmation of the Supplier in order to be valid.

12.5 If individual provisions of these Supplier's General Terms and Conditions of Sale, Delivery and Payment are or become invalid, the validity of the other provisions shall remain in full force and effect. The invalid provision shall be replaced by a valid provision which comes closest to the unanimous intentions of the parties or otherwise which comes closest to the original purpose of the contract.

## 13. GENERAL

13.1 All headings are for ease of reference only and shall not affect the construction of this Contract. Words denoting one singular include the plurals and vice versa. Words denoting any one gender include all genders. Words denoting persons include corporations and vice versa.

13.2 Assignment and other dealings.

(a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

13.3 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 1.11 in the case of the Supplier and the Order in the case of the Customer; if sent by prepaid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.4 Severance.

(a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any

modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.5 Waiver.

(a) A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.6 Third party rights. A person who is not a party to the Contract shall not have any rights to enforce its terms.

13.7 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.

## 14. TERMINATION

14.1 If the Customer becomes subject to any of the events listed in clause 14.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.

14.2 For the purposes of clause 14.1, the relevant events are:

(a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

(b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

(c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

(d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

(e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

(f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

(g) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(h) any event occurs, or proceedings are taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(a) to clause 14.2(g) inclusive;

(i) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

(j) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 14.2(a) to 14.2(j), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

14.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

14.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

14.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.



# THE SUPPLIER'S SUPPLEMENTARY TERMS & CONDITIONS OF DELIVERY REGARDING RENTAL

## 1. DEFINITIONS

1.1 For the definition of "Customer" and "Hirer" and other terms see the beginning of "THE SUPPLIER'S GENERAL TERMS & CONDITIONS OF SALE, DELIVERY AND PAYMENT".

## 2. ADDITIONAL RENTAL TERMS AND CONDITIONS

2.1 In addition to the "Supplier's General Terms and Conditions of Sale, Delivery and Payment", the following "Supplier's Supplementary Terms and Conditions of Delivery regarding Rental" shall apply for Goods which are hired by the Hirer and in the event of any conflict for Goods which are hired between the two sets of terms, the Supplier's Supplementary Terms and Conditions of Delivery regarding Rental shall prevail:

### 2.2 Nature

(a) The Supplier shall hire the Goods to the Hirer subject to the Conditions. The Goods shall at all times remain the property of the Supplier and the Hirer shall have no right, title or interest in or to the Goods (save the right to possession and use of the Goods subject to these conditions). The risk of loss, theft, damage or destruction of the Goods shall pass to the Hirer on delivery of the Goods. The Goods shall remain at the sole risk of the Hirer during the rental period and any further term which the Goods are in the possession, custody or control of the Hirer (Risk Period) until such time as the Goods are redelivered to the Supplier.

(b) During the rental period and the Risk Period, the Hirer shall at its own expense, obtain and maintain the following insurances:-

(i) insurance of the Goods to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;

(ii) insurance for such amounts as a prudent owner or operator of the Goods would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Goods; and

(iii) insurance against such other or further risks relating to the Goods as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the Hirer.

(c) If the Hirer fails to effect or maintain such insurance, the Supplier may affect the same, pay such premiums, and recover the same as a debt due from the Hirer.

2.3 The Hirer shall promptly pay the payments for the hire of the Goods monthly in arrears. The payments for the hire of the Goods are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Hirer at the rate and in the manner from time to time prescribed by law. All amounts due under this agreement shall be paid in full without any set-off, deduction or withholding (other than as required by law).

2.4 If the Hirer fails to make any payment due to the Supplier on the due date for payment, then the Hirer shall pay interest pursuant to clause 4.16 of the General Terms and Conditions of Sale, Delivery and Payment.

2.5 Rented shuttering's are normally reused items and the Hirer shall not be entitled to hire any new material for rented shuttering's. If special demands are made on rented shuttering's by the Customer or if the rented shuttering's have to have special qualities required by the Customer which deviate from the above mentioned basic quality, this has to be agreed in writing by the Supplier when the contract is made.

## 3. USE OF THE GOODS

3.1 The Hirer is, in particular, responsible for the appropriate and proper storage for the Goods, for intermediate and final cleaning of the Goods, for maintaining the shuttering face on any Goods, for the use of release agents and for complying with the maintenance and operating instructions made available (including accessories) by the Supplier to the Hirer.

3.2 All load bearing parts on the Goods, especially shuttering supports, may only be loaded or used in accordance with the load tables and statistical factors which will be made available by the Supplier to the Hirer on request. The aforesaid tables and statistical factors are to be requested by the Hirer from the Supplier.

3.3 The Hirer shall observe all applicable working safety laws and regulations in force from time to time, in particular the Accident Prevention and Health and Safety regulations of the trade associations.

3.4 The Hirer shall bear the risk of use of the Goods. The Hirer acknowledges that the Supplier shall not be responsible for any loss of or damage to the Goods arising out of in connection with any negligence, misuse, mishandling of the Goods or otherwise caused by the Hirer or its officers, employees, agents or contracts and the Hirer undertakes to be responsible for and to indemnify the Supplier on demand against the same and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Hirer to comply with the terms of this agreement or from whatever cause arising.

3.5 The Hirer shall during the rental period:-

(a) ensure that the Goods are kept and operated in a suitable environment and used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by the Supplier;

(b) take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Goods are at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

(c) make no alteration to the Goods and shall not remove any existing component(s) from the Goods. Title and property in all substitutions, replacements, renewals made in or to the Goods shall vest in the Supplier immediately upon installation;

(d) keep the Supplier fully informed of all material matters relating to the Goods;

(e) keep the Goods at all times at the location to which the Goods are delivered and not move or attempt to move any part of the Goods to any other location without the Supplier's prior written consent;

(f) permit the Supplier or its duly authorised representative to inspect the Goods at all reasonable times and for such purpose to enter upon the Hirer's premises at which the Goods may be located, and shall grant reasonable access and facilities for such inspection;

(g) maintain operating and maintenance records of the Goods and make copies of such records readily available to the Supplier, together with such additional information as the Supplier may reasonably require;

(h) not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Goods or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

(i) not without the prior written consent of the Supplier, attach the Goods to any land or building so as to cause the Goods to become a permanent or immovable fixture on such land or building. If the Goods do become affixed to any land or building then the Goods must be capable of being removed without material injury to such land or building and the Hirer shall repair and make good any damage caused by the affixation or removal of the Goods from any land or building and indemnify the Supplier against all losses, costs or expenses incurred as a result of such affixation or removal;

(j) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the Goods and where the Goods have become affixed to any land or building, the Hirer must take all necessary steps to ensure that the Supplier may enter such land or building and recover the Goods both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Supplier of any rights such person may have or acquire in the Goods and a right for the Supplier to enter onto such land or building to remove the Goods;

(k) not suffer or permit the Goods to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Goods are so confiscated, seized or taken, the Hirer shall notify the Supplier and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Goods and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

(l) not use the Goods for any unlawful purpose;

(m) ensure that at all times the Goods remain identifiable as being the Supplier's property and wherever possible shall ensure that a visible sign to that effect is attached to the Goods;

(n) deliver up the Goods at the end of the rental period or on earlier termination of this agreement at such address as the Supplier requires, or if necessary allow the Supplier or its representatives access to the Customer's premises or any premises where the Goods are located for the purpose of removing the Goods; and

(o) not do or permit to be done anything which could invalidate the insurances in respect of the Goods.

## 4. DISPATCH/PACKAGING

4.1 The type of dispatch and packaging, e.g. skeleton containers, stacking pallets, transport containers, etc, may be determined by the Supplier while taking the Hirer's preferences into consideration. If deliveries are made in skeleton containers, the Hirer must use the same skeleton containers for the return of the Goods. Dispatch costs, freight costs, packaging costs and unloading costs shall be borne by the Hirer. The Hirer shall also bear the costs for waiting time when loading or unloading unless it has expressly been agreed in writing with the Supplier that it is not responsible for the said waiting times.

## 5. CLEANING AND DAMAGES

5.1 The Hirer shall maintain the cleanliness of the Goods at their own expense in order to keep it in as good an operating condition as it was on the first day of the

rental period (fair wear and tear only excepted save as provided in 5.2 below).

5.2 Wear and tear caused by appropriate and proper use is included in the rental price. Exceptions from the aforesaid are shuttering damages which are attributable to a breach of duty e.g. as a result of non-observance of the requirements of clause 3 (Use of the Goods), to mechanical damages, effects of force or transport damages. Damages in the aforesaid respect are, in particular, piercings, indentations or drillings in the shuttering face or frame and panel formwork. The regulations concerning the burden of proof shall not be affected. The repair and cleaning cost incurred shall be borne by the Hirer unless he did not cause the damages.

5.3 Due to the Supplier's operational and technical competence, repairs to the Goods shall only be carried out by the Supplier at the Supplier's expense, unless otherwise provided in these terms. The Hirer must not repair or attempt to repair the Goods in the event of damage or breakdown and must notify the Supplier immediately upon such occurrence. If the damage or breakdown has been caused as a result of the fault or carelessness of the Hirer or by misuse of the Goods, the repair will be at the expense of the Hirer. The Supplier may substitute other Goods for a similar type or condition in lieu of repairing the Goods without relieving the Hirer from responsibility of cost of repair and without extending the period of hire. The Supplier may terminate the hiring by written notice to the Hirer at any time if in the sole opinion of the Supplier the Goods are not worth repairing or cannot be repaired, in such event, the Supplier shall repay the hire rent for any outstanding period for which it has already paid. Nothing in this clause shall affect or diminish the liability of the Hirer for any breach of this Contract or render the Supplier liable to the Hirer for any resultant of consequential loss, damage or inconvenience.

## 6. DELIVERY AND REDELIVERY

6.1 Delivery of the Goods shall be made by the Supplier pursuant to clause 6.1 of the Supplier's General Terms and Conditions of Sale, Delivery and Payment. The Hirer shall procure that a duly authorised representative of the Hirer is present when the Goods are delivered. Acceptance of the Goods by such representative shall constitute conclusive evidence that the Hirer has examined the Goods and have found it to be in good condition, complete and fit in every way for the purpose for which it is intended unless they are any latent defects not apparent on inspection.

6.2 In the case of a defect the Hirer shall notify the Supplier in writing without delay. If the Hirer does not notify the Supplier of a defect, the Goods shall be approved of unless the defect could not be seen when checking the equipment. In addition to this, 8.2 of the Supplier's General Terms and Conditions of Sale, Delivery and Payment applies.

6.3 If a defect is discovered later, notice must be given upon its discovery or the Goods shall be accepted despite its defects discovery.

6.4 After the end of the rental period, the Hirer shall be obliged to return the Goods to the Supplier at his own cost and risk.

6.5 The Hirer shall be obliged to return the Goods complete and in their original technical state without damages exceeding the normal wear and tear. The Goods when returned shall be cleaned, disassembled and ready for re-use, grouped in appropriate size, duly palletted and/or delivered in a way they can be unloaded with a lift truck.

6.6 If the conditions are not complied with when the Goods are returned, the Supplier shall be entitled to clean and/or repair the Goods at the cost of the Hirer.

6.7 If the Hirer returns the Goods in a condition where they cannot be economically repaired, the Hirer shall be obliged to pay to the Supplier compensation. Any disposal costs shall also be borne by the Hirer.

6.8 Transport insurance shall only be arranged at the express request and cost of the Hirer.

6.9 The Hirer shall ensure that rented items of the same type are not intermingled with other goods or equipment without the Supplier's written consent. When intermingling rented, purchased and other items, the Hirer shall have to prove which items are rented, purchased or other items. In case of doubt, the Supplier shall be entitled to designate or select those items from the mixed items as its own choice which are regarded as rented items and to insist upon their return at the end of the rent contract.

6.10 Unless another agreement was expressly made when concluding the contract, the Hirer shall be obliged to return the rented items to the warehouse that was agreed in the original contract.

6.11 The Hirer shall have to prove that the rented items have been returned completely.

## 7. WARRANTY

7.1 The Supplier shall be liable for operational defects relating to the rented items on the following conditions and to the following extent to the exclusion of any additional claims: all those parts shall be rectified or replaced free of charge at the option of the Hirer which prove to be defective due to circumstances occurring before the transfer of risk.

(a) If the aforesaid rectification or replacement is abortive, the Hirer shall be exempt from paying the relevant rent if the defect negates the suitability of

the rented item for the contractual use.

(b) The Hirer shall only pay an appropriately reduced rent for the period during which the suitability of the rented item is reduced.

(c) Any insignificant reduction in the suitability of the rented item shall be disregarded.

(d) Claims shall be excluded if the Supplier is hindered in examining the alleged defects or if the proof required by the Supplier is not made available immediately.

(e) Claims for damage compensation or self-rectification and reimbursement of the necessary expenses under English Law shall be excluded unless the Supplier was guilty of wilful intent or gross negligence.

7.2 Insofar as the Goods comprise or contain equipment or components that were not manufactured or produced by the Supplier, the Hirer shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer.

## 8. ADVERTISING BOARDS

8.1 The Supplier shall be entitled to erect advertising boards of a reasonable size and easily visible on the building site showing the name of the Supplier or any group company and its products. The Supplier shall also be entitled to photograph the Goods and to use them in its advertising (catalogues, literature and reference lists, etc) using the name of the Hirer. Any advertising attachment on the Goods for the Hirer or third party, especially the builder owners, shall require the prior written consent of the Supplier. The Hirer shall bear the cost for the attachment of its own advertising.

## 9. RENTAL PERIOD

9.1 The minimum rental period is one month.

9.2 The rental period shall commence on the day on which the Goods are collected by or delivered to the Hirer and shall end on the date the Hirer returns the Goods to the rental warehouse specified by the Supplier.

9.3 If the Hirer is in acceptance delay, the date of the Supplier's readiness to despatch shall count as the first rental day.

9.4 In the event of preassembled equipment, the rental period shall commence at the beginning of the assembly period to be agreed between the Hirer and the Supplier in the rental order.

## 10. TERMINATION WITHOUT NOTICE

10.1 The Supplier shall in addition to its rights under clause 14 of the Supplier's General Terms and Conditions of Sale, Delivery and Payment be entitled to terminate the Contract without notice together with all existing contracts with the Hirer and entitled to the return or to collect all the Goods that have been rented if the Hirer:

(a) delays payment of a full rental month for more than 30 days; or

(b) if a cheque issued by the Customer is dishonoured or

(c) if a bill issued by the Supplier is protested; or

(d) if the Goods that have been rented are not used in an orderly or proper manner or if it is not used or maintained in line with the Supplier's regulations despite a warning notice; or

(e) if the Hirer commits any other material breach of any other term of this agreement which is irremedial or (if such breach is remedial) fails to remedy that breach within a period of 5 days after being notified in writing to do so. No warning notice shall be required in the event of gross lack of proper care and maintenance.

10.2 The costs and expenses caused in recovering the Goods and collecting any sums due under this contract (including storage, insurance, repair, transport, legal and remarketing costs) as a result of the Contract termination shall be borne by the Hirer.

10.3 After termination without notice, in addition to the sums referred to in this clause, the Supplier shall be entitled to all rental payments and other sums due but unpaid at the date of such demand with interest demand and without prejudice to any other rights or remedies, the Supplier shall be entitled to demand a sum as compensation equal to the whole of the rental payments that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the rental period. Such sums may be party or wholly recovered from any deposit.

10.4 Termination or expiry of this agreement shall not affect any rights or remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## 11. PROTECTIVE OBLIGATIONS

11.1 The Hirer shall continuously control the Goods at the location that is agreed in the contract.

11.2 The Hirer shall protect the Goods with due care in accordance with these Conditions and in particular against theft, fire, water and weather related damages.

11.3 In the event of theft, the Hirer is obliged to notify it to the Supplier and the

responsible regulatory authorities in writing without delay. A copy of the police notification is to be forwarded to the Supplier immediately.

11.4 The Hirer shall be responsible for the disappearance and loss of shuttering material unless he has complied with his obligations under clause 11.1 and 11.2 in an orderly and proper manner.

## 12. RENTING TO THIRD PARTIES

12.1 The Goods may not be rented or lent to third parties, nor may they be placed at the disposition of third parties or to be detriment of the Supplier in any other way unless the Supplier has given its written approval thereof in writing.

12.2 Claims against third parties as a result of the dispositions of the Goods are hereby assigned to the Supplier.

12.3 Any transfer of the Goods made by the Hirer to a construction site other than the one specified in the rental contract shall require the express written consent of the Supplier. In the event of any breach of the aforesaid regulation, a contract penalty shall be due in the amount of GBP 5,000 (five thousand). The Supplier shall additionally reserve the right to enforce corresponding claims in the event of a larger damage. The Hirer shall be entitled to prove a lower level of damages.

## 13. DEPOSIT

13.1 The Supplier shall deliver the Goods on the payment of a deposit against default by the Hirer of payment of any rental payments or any loss of or damage caused to the Goods. The Hirer shall pay a deposit amounting to a maximum of three times the amount of the rental payment due for a period of one month. If the Hirer fails to make any rental payments when due or causes any loss or damage to the Goods (in whole or in part), the Supplier shall be entitled to use the deposit against such default, loss or damage. The Hirer shall pay to the Supplier any sums deducted from the deposit within 10 Business Days of demand of the same. The deposit (or balance thereof) shall be refundable within 5 Business Days of the expiry of the rental period.

## ADDITIONAL TERMS AND CONDITIONS OF SALE

In addition to the MEVA General Terms and Conditions of Delivery and Payment, the following Additional Terms and Conditions of Sale shall apply for the sale of shuttering, its components, accessories and other movable items:

### 1. RESERVATION TITLE

1.1 All goods delivered by the Supplier shall remain the property of the Supplier pending settlement of all claims against the Customer, including future claims.

1.2 The inclusion of delivered goods on a current account or striking a balance and recognition thereof shall not revoke the Supplier's reservation of title.

1.3 If delivered goods are processed by the Customer into new movable goods, the aforesaid processing shall be carried out in the name and on behalf of the Supplier without the Supplier being obligated in any way as a result. The new Goods shall become the property of the Supplier. In the event of processing together with goods not belonging to the Customer, the Supplier shall acquire coownership in the new goods in the ratio of the value of the reserved goods to the other goods at the time of processing.

1.4 The Customer shall be obliged to keep reserved Goods purchased from the Supplier separate from third party goods, rented goods or purchased goods which are his property. If reserved goods are intermingled/mixed with third party goods contrary to the aforesaid obligation, and/or if they are intermingled/mixed with rented goods and if the reserved goods or rented goods can no longer be separated from third party goods, the Supplier shall become co-owner in accordance with the relevant legal regulations.

1.5 If the Customer acquires the exclusive ownership or co-ownership as a result of intermingling/mixing, he hereby assigns the aforesaid co-ownership to the Supplier based on the value of the reserved goods or rented goods to the value of third party goods at the time of intermingling/mixing. The value of the Supplier's goods shall be determined on the basis of their list price taking account of an appropriate reduction for usage wear and tear. In such a case, the Buyer shall be obliged to store for no extra charge the goods owned or part-owned by the Supplier which likewise have to be treated as reserved goods.

1.6 If reserved goods are sold by the Customer or together with other goods, the Customer hereby assigns his claims arising from the aforesaid resale in the amount of the value of the reserved goods with all ancillary rights and rankings above the other goods. If the resold reserved goods are co-owned by the Supplier, the assignment of the claim shall also include the amount corresponding to the pro rata value of the Buyer in the co-ownership goods.

1.7 The Supplier shall empower the Customer to collect the claims referred to in the preceding paragraph subject to a right of revocation.

1.8 The Supplier shall make no use of its own collection authority as long as the Customer complies with his payment obligations, also to third parties.

1.9 At the request of the Supplier, the Customer shall name the liable party for the assigned claim and shall notify the aforesaid of the assignment. The

Supplier shall be entitled to notify the liable party of the assignment itself.

1.10 The Customer shall immediately inform the Seller of any enforcement proceedings of third parties with regard to the reserved goods or assigned claims, simultaneously forwarding the documents required for a contestation. In the event of insolvency, the petitioning or opening of insolvency proceedings (with any rights of the insolvency receiver remaining unaffected in accordance with the England and Wales Insolvency Act or in the event of judicial composition proceedings, the right to resell, use or install reserved goods and the power of authority to make collections shall duly lapse. The authority to make collections shall also lapse if a cheque is dishonoured or if a bill is protested. The Supplier shall be entitled to take possession of its reserved goods in such cases.

1.11 If the Customer has intermingled/mixed reserved goods and/or rented goods with third party goods, The Supplier shall be entitled to separate its rented goods first of all and then its reserved goods with the agreement of the Customer based on the relevant invoice documents.

1.12 It shall be unanimously agreed which goods are rented goods and which goods are reserved goods on the basis of the invoice documents. If the Customer does not collaborate with this segregation, The Supplier shall be entitled to effect this on its own by involving a technical expert.

1.13 If the security attributable to the Supplier on the strength of the advanced assignment exceeds the value of the secured claim by more than 10 %, it shall be obliged to effect a reciprocal assignment or release at its option. The value of the secured claim shall be determined on the basis of the price which the Supplier invoiced to the Customer.

1.14 If the Customer transfers a claim assigned to the Supplier in connection with a resale of delivered goods into a current account with his customer, the current account claim shall be assigned in full. After netting off all relevant items, it shall be replaced by the agreed balance which shall be regarded as assigned up to the amount equivalent to the original claim.

### 2. WARRANTY

2.1 In the case of Goods which are intended for the production of permanent visible concrete areas, the basic quality of the purchased goods shall be based on the criteria in the "Quality Criteria for Concrete Shuttering" notice sheets issued by Güteschutzverband Betonschalungen e.V. in their version in force when the contract was signed.

2.2 The Supplier shall deliver new or improved goods which demonstrably prove to be defective as a result of facts or circumstances prevailing before the transfer of risk.

2.3 The reservation of title (Section 1) shall also apply for parts or components replaced in the exchange procedure.

2.4 The Customer shall give the Supplier reasonable time and opportunity to effect the post-performance or rectification otherwise the Supplier shall be exempt from liability and warranty for the consequences arising therefrom.

2.5 If the place of delivery or assembly is outside the Federal Republic of Germany, the total costs to be borne for rectification work shall be limited to the order amount.

2.6 In cases of a culpable contributory causation of defects by the Buyer, especially non-compliance with his duty to avoid and restrict damages, the Supplier shall have a compensation claim corresponding to the contributory causation attributable to the Customer after the rectification has been effected.

2.7 The sale of second-hand goods shall be exclusive of all warranties and guarantees.

## SUPPLIER'S ADDITIONAL TERMS AND CONDITIONS FOR REPAIR AND OTHER SERVICES

In addition to the Supplier's General Terms and Conditions of Sale, Delivery and Payment and Supplier's Supplementary Terms and Conditions of Delivery regarding Rental the following Supplier's Additional Terms and Conditions for Repair and Other Services shall apply for the repair of Goods and for other services and for secondary sales or rental related services for shuttering, its components, accessories and other movable items as specified in an Order.

### 1. ADDITIONAL SERVICES

1.1 The Customer may order additional services with the Supplier, including, for example, assembly and disassembly work, engineering services, static calculations or shuttering planning, transport and logistic services, repairs attributable to damages caused by improper handling of the shuttering material, cleaning and return of the shuttering material which services shall be included in any Order and form part of the relevant contract and which the Supplier shall provide with reasonable skill and care.

1.2 Unless otherwise agreed, the price for the aforesaid work/services to be paid by the Customer will be according to the Supplier's price list in being when the contract for the services was signed. The Supplier shall submit an invoice for the service charges on or at any time after the Supplier has accepted the Customer's order or on or at any time after the completion of the services. The Customer shall pay each invoice due and submitted to the Supplier within 30 days of the date of the invoice.

## 2. SHUTTERING PLANS

2.1 If a pre-assembly service is to be carried out by the Supplier, the Customer shall receive the shuttering plans before the preassembly starts for approval. The Customer shall immediately examine the aforesaid plans with regard to their accuracy and immediately return the aforesaid plans to the Supplier countersigned as a confirmation of his approval.

2.2 The Customer shall immediately inform the Supplier in writing if the shuttering plans are inaccurate and/or need to be amended. If no such notification is made within 7 days of the date of such plans, the shuttering plans shall be deemed to have been approved by the Customer.

## 3. PROTECTIVE OBLIGATIONS

3.1 Unless otherwise agreed, the Customer shall at its cost take all necessary steps that are required to protect persons and property on the assembly site. The Customer shall co-operate with the Supplier in all matters relating to the services to be provided and shall provide for the Supplier and its agents, sub-contractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, data and other facilities reasonably required by the Supplier. If the Supplier's performance of its obligations to provide the services is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay and the Customer shall be liable for additional costs, charges, damages to and the losses of delivered parts, components and tools (unless it is not responsible for the aforesaid damages or loss) and any other losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay. This shall also apply for the parts and components stored on an interim basis at the Customer premises prior to the completion of assembly work.

## 4. EQUIPMENT / ASSEMBLY AND STORAGE AREA

4.1 Unless otherwise agreed, the Customer shall provide appropriate working conditions in line with the relevant safety regulations and make the necessary lifting gear available, together with transport equipment, any necessary walkie-talkie equipment with the crane driver and other facilities if necessary also on Saturdays for no charge.

4.2 The Customer shall make adequate assembly and intermediate storage areas available. An assembly area, a table circular saw and an adequately large storage area shall be made available for construction site assembly work. The Customer shall also provide daytime accommodation, site electricity, water, building rubble and general disposal possibilities free of charge. Levelling work, axle fixing and other measurement specifications shall be made on site when shutterings are used for the first time.

## 5. FORMAL ACCEPTANCE

5.1 After the end of the assembly work and after the notification of the completion of work by the Supplier, a formal acceptance of the Goods shall take place or be deemed to have taken place pursuant to the provisions of the General Terms and Conditions of Sale, Delivery and Payment without delay. The acceptance procedure shall be carried out on the assembly site.

5.2 A formal protocol shall be prepared in the acceptance procedure and signed by the Customer and the Supplier.

5.3 If the Customer fails to appear on the agreed acceptance date, the assembly work shall be deemed to have been accepted.

## 6. PROPERTY OF THE CUSTOMER

6.1 The Supplier shall not be liable for the use of property made available on site by the Customer.

6.2 Parts and components provided by the Customer must be clean and in working order. If this is not the case, any additional expenses incurred in the aforesaid respect shall be for the account of the Customer.

## 7. SCOPE OF RESPONSIBILITY

7.1 If the Supplier is to take over the task of instructing the responsible employees appointed by the Customer, this shall require a specific contractual agreement.

7.2 The Customer shall be exclusively responsible for the compliance with all security regulations after formal acceptance by the Customer and after the Customer has been duly familiarised and/or obtained the operating instructions.

7.3 The Customer shall comply with all the prerequisites for the execution of work by the Supplier and shall, in particular, obtain all public law licenses and approvals.

## 8. ADDITIONAL COSTS

8.1 If the basis for the price for the work envisaged in the present contract changes as a result of instructions issued by the Customer, a new price shall be agreed which takes account of the additional or lower costs. The relevant variation to the agreement shall be made before the start of work.

8.2 If work is required which is not envisaged in the contract, the Supplier shall

be entitled to charge on a time and materials basis for the aforesaid work at its current rates. The Supplier shall, however, notify the Customer of its claim for additional costs before it starts the work in question. The rate for the additional costs shall be based on the current rates for the contractual work and at any other rate which in the opinion of the Supplier accords with the special costs required for the requested work.

8.3 If the assembly work is interrupted due to the building conditions or the organisation of the job site or by order of the Customer, the Customer shall bear the additional expenditure. This shall also apply for all matters exceeding the original order, especially for revised assembly or service instructions and for all other unforeseeable impediments for which the Customer is responsible. Insignificant expenditure is left out of consideration.