

Kirtanlal International / Al Zahra Scaffolding TR. LLC

Scaffolding and Formwork Division January 2016.

## **Standard Terms and Conditions of trade.**

### **Definitions.**

"Conditions" means the Conditions of Trade.

"Contract "has the meaning given in Clause 3.

"Customer "means the Company or individual specified in the quotation as hiring or purchasing, as applicable, the equipment, from the Owner.

"Customer requirements "mean those that are specified within the technical proposal forming part of the quotation.

"Day" means a calendar day of twenty-four hours (24) and includes Friday, Saturday and all Public holidays.

"Equipment "means all plant, machinery, equipment and components which the Owner agrees to sell or hire to the Customer.

"Equipment Delivery Note "has the meaning given in Clause 14.

"Owner "means Al Zahra Scaffolding TR. LLC.

"Price "means:

- a. For the sale of equipment; the purchase price and
- b. For the hire of equipment; the rate of hire by which the equipment is charged daily, multiplied by the number of days for which the equipment is hired, each as stated in the quotation or as otherwise agreed in writing between the Owner and the Customer.

"Quotation" means the financial documents reflecting the charge which is attached to the Terms and Conditions of Trade.

"Rental "means the rate for the hire of equipment as specified within the quotation or as otherwise agreed to in writing between the Owner and the Customer.

### **Interpretation**

1. Headings will not affect the construction of these conditions.
2. These conditions apply to both Hire and Sale of equipment except where specifically stated otherwise.

### **Conditions of Trade.**

3. The quotation and these conditions comprise the entire agreement (Contract) between the Owner and the Customer to the exclusion of all other terms and conditions. No conduct of the Owner shall constitute acceptance of any terms put forward by the Customer and no variation of these conditions shall be binding on the Owner unless agreed in writing by an authorized representative of the Owner.

4. A facsimile or Email notice from the Customer instructing the Owner to deliver the equipment specified within the quotation will be deemed to constitute the Customers' acceptance of the quotation and these conditions.
5. The quotation given by the Owner is only valid for fourteen (14) days from the date raised, unless the Owner has withdrawn the quotation prior to its acceptance by the Customer.
6. The Owner hereby agrees to hire or sell to the Customer the equipment at the prices specified within the quotation upon the terms and subject to these Conditions.
7. The hire of equipment shall:
  - a. Commence on the date the material is made available for collection by the Owner (or its Agent)
  - b. Commence on the date the material leaves the Owners premises for delivery to the Customers site or delivery address named within the quotation.
  - c. Be for a minimum period of four (4) weeks,
  - d. Continue until the material is returned or should have been returned to the Owner in accordance with these conditions.

#### **Delivery and Risk**

8. When the equipment is ready for collection, the Owner will give the Customer notice of readiness for collection. Within ten (10) days from that notice, the Customer must give the Owner either:
  - a. A written notice that he intends to collect the equipment from the Owner on a date within the ten (10) days of the Owners notice to the Customer and the Customer must collect the equipment on that date or:
  - b. If the parties have previously agreed in writing that the Owner shall provide transport for delivery, a written request that such transport be provided at the Customers sole expense and the Owner and Customer will then agree a date for delivery.
9. If the Customer fails to collect the equipment within ten days of the Customers notice under clause 8a and has not agreed with the owner that the Owner will deliver the equipment in accordance with clause 8b, then the Owner may treat the Customers failure as a repudiation of the Contract with immediate effect in which case the Owner may do any or more of the following:
  - a. recover from the Customer all losses caused by the breach.
  - b. retain any payments made by the Customer before termination of the contract,
  - c. recover from the Customer the cost of hiring the equipment for the minimum period of four weeks referred to in clause 7c.
  - d. Hire or sell the equipment to another Customer or any third Party.
10. The Owner will use its reasonable endeavors to have the equipment ready for collection by the date agreed in accordance with clause 8 but shall not incur any liability whatsoever, nor shall the Customer be entitled to terminate the Contract, by reason of the Owners failures deliver the equipment or have it available for collection by dates contemplated in clause 8.
11. Where the Owner agrees to deliver the equipment, it shall only be delivered to the Customers site or address as specified within the quotation unless otherwise agreed. The

Owner shall arrange delivery of such equipment to such address and any costs of the delivery, as specified by the Owner to the Customer, shall be reimbursed immediately to the Owner by the Customer.

12. The Owner and the Customer agree that the risk in all equipment that is:
  - a. delivered by the Owner in accordance with clause 11 will pass to the Customer when the equipment leaves the Owners premises and,
  - b. collected by the Customer from the Owners premises will pass to the Customer immediately upon collection.
13. The Owner may deliver the equipment in instalments of any size and in any order as it sees fit. Each separate delivery shall be invoiced and paid for in accordance with the Contract.
14. For each delivery or collection of equipment, the Owner will provide to the Customer an "Equipment Delivery Note "that describes the equipment forming part of the Contract. The Equipment Delivery Note will give to the Customer shall constitute proof of delivery or collection of the equipment unless and only where the Owner has delivered the equipment under clause 8b, the Customer produces conclusive evidence proving the contrary within twenty-four (24) hours of the equipment being delivered.
15. The Customer is responsible for the unloading of all equipment at the Customers site or delivery address named in the quotation and shall supply suitably qualified labour and plant to facilitate the same. The Owners employees and those of any transport company it employs are not responsible for the unloading of any equipment at the Customers site or address named in the quotation.
16. If the Owner delivers to the Customer a quantity of equipment between ninety-five percent ( 95% ) and one hundred and five percent (105% ) of the specified quantity in the quotation, then the Customer shall not be entitled to object to or reject the equipment by reason of the surplus or shortfall and must pay for the equipment at the prorated price.
17. Without prejudice to clause 16 above, The Owner has no liability to the Customer in respect to any shortfall in equipment delivered or collected unless the Customer gives the Owner notice of the shortfall within three (3) days of delivery or collection. If the Customer does give notice, the Owner at its own discretion either:
  - a. make good the shortfall by making one or more deliveries or
  - b. reduce the price on a pro-rata basis.
18. To avoid doubt, the Customer shall not be entitled to reject any delivery on the grounds of any excess or shortfall to the delivery or collection but shall pay the price, or where the Owner exercises the option in clause 17b, the reduced price in accordance with that provision.
19. If the Customer rejects the equipment or collection of the same for any reason other than the circumstances described in clause 18, the Customer must notify the Owner as soon as possible. The Owner shall then examine the equipment and if any are found not to conform with the Customers' requirements, the Owner may:
  - a. at its own expense, replace the equipment found not to be in accordance with the Customers' requirements, or
  - b. reduce the price by an amount equivalent to the proportion of the price payable in respect of the equipment that is found not to conform to the Customers' requirements.

20. The Customer shall in any case accept and pay the price for the equipment which conforms to the Customers' requirements.

**Owner's liability.**

21. The Owner shall exercise reasonable skill and care to ensure that the equipment and any drawings, design, measurement or specification provided by the Owner satisfies the Customers' requirements, subject to the following:
- a. The Owner has no liability for any alleged failure of the equipment or any drawing, design, measurement or specification provided by the Owner arising out of or in connection with any inaccurate, incomplete, conflicting or ambiguous information, drawing, design or specification supplied by the Customer and used by the Owner as the basis for providing the technical proposal forming part of the Quotation.
  - b. The Owner has no liability in respect of any defect arising from ordinary wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Owners instructions (whether oral or not) or any misuse or alteration of repair of the equipment without the Owners approval.
  - c. The Owner has no liability in relation to parts, materials or equipment not supplied by the Owner.
  - d. The Owner has no liability for any alleged failure of the equipment or any drawing, design, measurement or specification provided by the Owner to satisfy the Customers' requirements if such failure is not notified by the Customer to the Owner forthwith, but in no event to exceed forty-eight (48) hours, following the equipment being delivered or collected, as applicable.
  - e. The Owner has no liability to any damage to property of any kind or any economic loss suffered by the Customer as a result of failure of any equipment or any drawing, design, measurement or specification supplied by the Owner that conforms to the Customers' requirements including without limitation loss of profits, loss of business, loss of production, loss of goodwill or other consequential damages.
  - f. The Owner has no liability if the equipment is not fit for a particular purpose and all other conditions, warranties stipulations and undertakings whether express or implied, by statute or under common law are excluded.
  - g. The Owner has no liability if the Customer breaches clause 37 or any part thereof, and
  - h. The Owners liability to the Customer pursuant to these conditions shall be limited to the proportion of the Customers losses which it would be just and equitable to require the Owner to pay having regard to the extent of the Owners liability to the same.
22. Without predicate to clause 21, Owners maximum overall liability under or in connection with the contract shall in no event exceed ten percent (10%) of the face value of the contract.

**Payment.**

23. In the case of equipment for hire, the Owner will issue an invoice to the Customer for the hire of the equipment and any other amounts due in accordance with these conditions, on the last working day of the month in which the equipment is delivered or collected or in which other amounts become due and on the last working day of every month thereafter until the date the

equipment is returned to the Owner in accordance with these conditions. Payment is due thirty (30) days from the date of the invoice. Time is of the essence in respect of the payment of all sums due thereafter.

24. In the case of equipment for purchase and where the Customer has no agreed credit facility with the Owner at the time of delivery of the equipment, the price of such equipment, together with any other amounts due under this Contract shall be invoiced and payable prior to or immediately upon delivery of the equipment. All payments shall be made by cash or cheque, allowing five (5) working days for cheque clearance.
25. In the case of equipment for purchase and where the Customer has an agreed credit facility with the Owner at the time of delivery of the equipment, the price of such equipment, together with any other amounts due under this Contract, shall be invoiced and be payable at any time after delivery of the equipment. All payments shall be made within thirty (30) days of such invoice.
26. The Owner may at any time withdraw with immediate effect the Customers credit facility, with or without providing the Customer a reason for such action. In no event shall the Owner have any liability to the Customer for any with drawl of the Customers credit facility.
27. All payments under the Contract, shall be made without deduction or offset for any alleged short fall in delivery, defect in quality or failure to conform to Customers' requirements or any other breach of this Contract. Payment must be made to the Owners address stipulated in the quotation or such other address as the Owner may from time to time notify to the Customer. Time is of the essence in respect of the payment of all sums due thereafter any payment made by mail shall be at the risk of the Customer until such amount is credited into the Owners account.
28. The Customer expressly acknowledges and accepts that the Owner shall be entitled to increase the rental, by such an amount that the Owner shall in its absolute discretion determine in the event that costs of material, labour, or transport for any other cost of providing the equipment shall increase. Any such revision shall be notified by the Owner to the Customer not less than fourteen (14) days before the date the revised rental charges take effect.
29. If the Customer does not pay the price or any part of the price by the date specified in accordance with these conditions, then in addition to the outstanding price, then the Customer must also pay:
  - a. interest on the price and any other amount due in accordance with these conditions which are not paid when due, at the rate of fifteen percent (15%) per annum, and
  - b. all additional administrative costs incurred by the Owner in recovering any late payments, all such amounts being calculated from the due date for payment of the price (and any other amount) until actual payment of the same.
30. The price and any other amount due in accordance with these conditions is exclusive of any taxes which may be applied If any which may be due at the rate prevailing, on the date of the invoice, and any other tax or levy which the Owner is or shall become liable to pay or collect, other than a tax on the Owners net income.
31. In the event of any breach by the Customer of any term, condition or warranty of these conditions, the Customer must pay any invoice rendered to it on demand.
32. Where the Customer has failed to pay an amount due under the contract within thirty (30) days required under clause23, the Owner may appropriate any payment made by the Customer for such equipment, (including equipment supplied under any other contract with the Owner) as the

Owner may in its sole discretion see fit.

**Tax.**

33. All prices in this quotation are exclusive of any taxes (including but not limited to VAT). Such taxes may be applicable either at the time of quotation, invoicing, payment or any other time as notified by the relevant Government Authority.  
Further the rate of tax will be the rate prevailing at applicable time.

**Property.**

34. In respect of any equipment for hire, the equipment shall at all times remain the property of the Owner and the Customer shall have no rights to the equipment other than as hire and the Customer must not permit or cause to be done any matter or thing that might prejudicially affect the rights of the Owner in respect of the equipment.
35. In respect of equipment for sale, property in such equipment shall not pass to the Customer until payment of the price has been paid to the Owner in full accordance with these conditions.
36. Until property of the equipment for sale passes to the Customer in accordance with these conditions, the Customer shall hold them in trust and shall store them separately from any similar equipment in such a way that they remain identifiable as the Owners property.
37. The specification drawing and design relating to the equipment (including the Copyright, design right or any other intellectual property in them) shall, as between the Parties, be the property of the Owner. Where designs, drawings or specification have been supplied by the Customer, the Customer warrants that the use of those designs, drawings or specification does not infringe the right of any third party.
38. The Customer must not use the equipment for which they are not expressly designed. The Customer hereby agrees that it will not:
- a. without the prior written consent of the Owner effect any modification or make any alteration or addition to the equipment, or:
  - b. removes or interfere with any identification mark or plates affixed to the equipment and not attempt or purport to do so nor permit the same.

**Insurance.**

39. In the case of the equipment for hire, the Customer must throughout the period of the Contract, keep the equipment insured with an insurance company of good repute against loss or damage formally risks (including Third Party risk) for the replacement value of the equipment.
40. The Company shall notify its insurers that the equipment's on hire from the Owner and request the insurers to endorse a note of such interest on the policy of insurance naming the Owner as loss payee. The Customer shall on demand show the Owner evidence of the policy

of insurance and shall not use or allow the equipment to be used for any purpose not permitted by the terms and conditions of such policy.

41. If the Customer makes a default in the payment of any premium in respect of the insurance or fails to take out the insurance required by this clause, the Owner may pay such a premium and recoup the cost of such a premium from the Customer.
42. The Customer shall immediately notify the Owner if an event occurs which is a risk covered by the Customer's insurance. The Customer shall indemnify the Owner against any and all loss or damage to the equipment not recovered or recoverable under the policy of insurance.

#### **Termination.**

43. If:
  - a. any legal process is levied against the Customer on account of the Customer's failure to pay any of its obligations as and when they fall due.
  - b. the Customer (being a Company) enters into liquidation, or
  - c. the legal process is levied on or against the equipment or any part thereof or against the Customer's premises, where the same may be, then any hire constituted by the Contract shall terminate without notice and no payment subsequently accepted by the Owner without knowledge of such termination shall in any way be prejudiced or affect the operation of this clause.
44. If:
  - a. the Customer fails to pay any rental or other sums payable under the Contract in full within seven (7) days after the same shall have become due.
  - b. the Customer commits a breach of any of the other terms of the Contract and if capable of being remedied fails to remedy the breach within fourteen (14) days after notice in writing from the Owner requiring the same.
  - c. the Customer does anything whereby the Owner's rights in the equipment are prejudiced or put in jeopardy, or:
  - d. the Owner so decides for any other reasonable cause, the Owner shall have the right to terminate the contract forthwith and all purposes.
45. At the end of the hire of any equipment or on earlier repudiation or termination in accordance with the Contract, the equipment must be returned to the Owner in accordance with clause 46 to 51 inclusive.
46. The Customer shall not be entitled to claim for loss of profit or breach of contract in respect of any termination of this contract.

#### **Return of equipment.**

47. At the end of the hire of equipment or on earlier repudiation or termination in accordance with the Contract, all equipment must be returned to the Owner forthwith at its premises where the equipment was originally supplied (unless otherwise specified by the Owner) in good repair and in clean and sound condition (fair wear and tear excepted).

48. The Customer shall ensure the safe keeping, supervision and custody of the equipment until it is returned to the Owner.
49. The Customer shall be responsible for the loading of all equipment being returned in accordance with all relevant laws and regulations. If the Owner considers that the equipment has not been safely loaded, the Owner has the right to return the relevant equipment to the Customer for safe loading in which case the period of hire will continue until the equipment has been returned to the Owner in a safe condition. The assessment as to the condition of the equipment shall be made solely by the Owner, acting reasonably, whose assessment shall be binding on the Customer.
50. The Customer shall fully reimburse the Owner for all charges and costs incurred by it for the cleaning or repairing damaged or defective equipment's notified to the Customer. The Customer shall pay the full replacement cost of equipment listed in the quotation for all lost or irreparable items as specified by the Owner, based on the Owners price list current at the date of, as appropriate the repudiation or termination.
51. If the Customer fails to return the equipment within fourteen (14) days of being obliged to, the Owner may forthwith and without notice retake possession of such equipment and for this purpose shall be entitled freely to enter into and upon any premises occupied by or under the control of the Customer.
52. If the equipment is situated on premises which are occupied or under the control by a Third Party, the Customer shall ensure that it has made sufficient arrangements with the Third Party to enable the Owner to enter on to such premises in order to exercise its right under this clause to retake possession of the equipment.
53. Without prejudices to the Owners rights to claim damages, the Customer shall on termination or repudiation of this Contract become immediately liable to pay to the Owner all arrears of rental and any other amounts due and payable under this contract and any costs and expenses incurred by the Owner in locating repossession and recovering or restoring the equipment or collecting payments due under the contract.

**Sub-contracting and Assignments.**

54. The Owner, but not the Customer may, assign, sub-contract or sublet this Contract or the equipment or any part thereof and the Customer shall ensure that all the equipment hired from the Owner remains on the agreed site until returned to the Owner unless otherwise expressly agreed by the Owner.

**Miscellaneous**

55. The Owner has designed, manufactured or procured the manufacture of and supplied the equipment for and to the Customer on the basis of the written undertaking herewith that the Customer will ensure that the equipment will be safe and without health risk when being set, used, cleaned or maintained by the Customer, its employees and / or any third party.
56. The Owner will not be liable to the Customer in any civil proceedings brought by the Customer against the Owner under any health and safety legislation and regulation where such exclusion of liability is permitted by law.
57. The Customer shall indemnify and keep indemnified the Owner in respect of any liability in respect of or in connection with the equipment incurred directly by the Owner under any law,

regulation, order or direction made thereunder.

58. The right and remedies of the Owner shall be diminished, waived or extinguished by the granting of any indulgence or forbearance or extension of time by the Owner or any failure or delay by the Owner in asserting or exercising any such rights or remedies.
59. If any provision in the Contract shall be held to be void, illegal, invalid or unenforceable, in which or in part, under any enactment or rule of law or by any Court or other tribunal (including in an arbitration under clause 60) such provision or part shall to that extent be deemed not to form part of the Contract but the legality, validity and enforcement of the remainder of the Contract shall not be affected.

#### **Dispute resolutions**

60. The governing law of the Contract shall be the substantive law of the Dubai International Financial Centre, UAE.
61. Any dispute arising out of or in conjunction with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration Rules of the DIFC- LCIA Arbitration Centre, which rules are deemed to be incorporated by reference to this clause. Any arbitration shall be in accordance with the following:
- a. the number of arbitrations hearings shall be one,
  - b. the seat, or legal place, of arbitration shall be the Dubai International Financial Centre, Dubai, UAE and
  - c. the language to be used in the arbitration shall be English.

#### **Order Acceptance**

62. Acceptance of Order will not be provided if any closed date or limited date conditions are applied on rental Purchase Orders.

#### **Quotation Reference on LPO**

63. Our quotation reference must be mentioned on your LPO, without which your LPO will not be accepted.

#### **Third Party Inspection**

64. All third-party inspections of Al Zahra Scaffolding equipment is to be arranged by contractor and payment of such services are at the contractor's responsibility.

End.