

Standard Terms and Conditions of Trade

Please draw your attention in particular to clause(s) 19, 20 and 27

Definitions

"Conditions" means the Conditions of Trade

"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 (24) hours and includes weekends and all public holidays.

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

"Owner" means **KIRTANLAL SCAFFOLDING AND FORMWORK PRIVATE LIMITED**.

"Price" means:

- For the sale of Equipment; the purchase price and
- 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 Customer.

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

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

"Unit of Measurement" means definite magnitude of physical quantity defined as standard measurement for similar quantity.

Interpretation

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

Conditions of Trade

- The quotation and these conditions comprise the entire agreement (Contract) between the Owner and 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 to the Owner unless agreed in writing by an authorized representative of the Owner.
- 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 Customer's acceptance of the quotation and these conditions.
- The quotation given by the Owner is only valid for fourteen (14) days from the date raised, unless the Owner has withdrawn the quotation prior to its acceptance by the Customer.
- The Owner hereby agrees to hire or sell to the Customer the Equipment at the prices specified within the quotation prior to its acceptance by the Customer.
- The hire of Equipment shall:
 - Commence on the date the material is made available for collection by the Owner (or its Agent).
 - Commence on the date the material leaves the Owners premises for delivery to the Customers site or delivery address specified within the quotation.
 - Be for a minimum of four (4) weeks,
 - Continue until the material is returned to the Owner in accordance with these conditions.

Delivery and Risk

- 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 written notice that he intends to collect the Equipment from the Owner on a date within the ten (10) days of the Owner's notice to the Customer and the Customer must collect the Equipment on that date or;
 - If the parties have previously agreed in writing that the transport delivery charges shall be borne by the Owner, a written request that such transport to be provided at the Customers sole expense. The parties under this clause shall agree on a specific delivery date.
- If the Customer fails to collect the Equipment within ten (10) days of the notice period under clause **8a** and has not agreed with the Owner that the latter will deliver the Equipment in accordance with clause **8b**, the Owner may treat the Customer's failure as a repudiation of the Contract with immediate effect in which case the Owner may do any or more of the following:
 - Recover from the Customer all losses caused by such breach.
 - Retain any payments made by the Customer before the termination of the Contract,
 - Recover from the Customer the cost of hiring the equipment for a minimum period of four (4) weeks referred to in clause **7c**.
 - Reserve the right to hire or sell the Equipment to any other Customer or third party.
- The Owner will use its reasonable endeavours 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 Owner's failure to deliver the Equipment or have it available for collection by the dates contemplated in clause **8**. Where the Owner agrees to deliver the equipment, it shall only be delivered to the Customer's site or address as specified within the quotation unless otherwise agreed. The Owner shall arrange delivery of such Equipment to such address. In such case, the Customer shall immediately reimburse the Owner for any delivery costs as described by the Owner.
- The Owner and Customer agree that the risk in all Equipment that is:
 - Delivered by the Owner in accordance with clause **10** will pass to the Customer when the Equipment leaved the Owners premises and if,
 - Collected by the Customer from the Owners premises, risk will pass to the Customer immediately upon collection.
- The Owner may deliver the Equipment in instalments of any size and in any Order as it sees fit. Each delivery shall be invoiced and paid for in accordance with the Contract.
- For each delivery of Equipment either by the Owner to the Customer's yard or pickup of Equipment by the Customer from the Customer, the Owner will issue a "hire delivery ticket" (HDT). For each collection of Equipment either by the Owner from the Customer's yard or by the Customer to the Owner's yard, the Owner will issue a "hire return ticket" (HRT). Collectively these tickets shall be referred to as the "Equipment delivery note" (HDN). The HDN shall constitute proof of delivery or collection of the equipment. If any dispute arises the Customer has to produce conclusive evidence proving the contrary within twenty-four (24) hours of the Equipment being delivered.

- The Customer is responsible for the unloading of all Equipment at the Customers site or delivery address named in the quotation and shall supply suitable and qualified labour and plant (forklift or crane) to facilitate the same. The Owner's employees and those of any transport company it hires are not responsible for the unloading of any Equipment at the Customer's site or address named in the quotation.
- 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, the Customer shall not be entitled to object or reject the Equipment by reason or surplus or shortfall and must pay for the Equipment at the prorated price.
- Without prejudice to clause **15** 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 not give notice, the Owner at this own discretion either:
 - make good the shortfall by making one or more deliveries or,
 - reduce the price on a pro-rate basis.
- If the Customer rejects the Equipment or collection of the same for any reason other than the circumstances described in clause **15**, the Customer must notify the Owner within twenty-four (24) hours. The Owner then shall examine the Equipment and if any are found not to conform with the Customer's requirements, the Owner may:
 - At its own expense, replace the Equipment found not to be in accordance with the Customer's requirements or,
 - Reduce the price by an amount equivalent to the portion of the price payable in respect of the Equipment that is found not to conform with the Customer's requirements.
- The Customer must in any case accept and pay the price for the Equipment which conforms to the Customer's requirements.

Owner's Liability

- 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 Customer's requirements, subject to the following:
 - The Owner has no liability for any alleged failure of the Equipment and any drawings, 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. If such failure is not notified by the Customer to the Owner within forty-eight (48) hours from the date the Equipment was delivered or collected, as applicable.
 - 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 Owner's prior approval.
 - The Owner has no liability in relation to parts, materials or Equipment not supplied by the Owner.
 - 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 any Equipment and any drawings, design, measurement or specification provided 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.
 - 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 any laws are excluded, as per clause(s) **57/58**.
 - The Owner has no liability if the Customer breaches clause **36** or any part thereof, and
 - The Owner's liability to the Customer breaches under these conditions shall be limited to the proportion of the Customer's losses that is fair and reasonable to require the Owner to pay, considering the extent of the Owner's responsibility for those losses.
- Without prejudice to clause **19**, the Owner's liability under or in connection with the Contract shall not, under any circumstances exceed ten percent (10%) of the price of the Contract.
- In the event where the Owner provides to the Customer Equipment as well as labourers to erect/ dismantle said Equipment (hereafter known as "Contract-hire"), the Owner will take sole responsibility for the payment, conduct, transport and productivity of his labourers unless otherwise specified.

Payment

- 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 to the payment of all sums thereafter.
- In the case of Equipment for purchase:
 - 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 the delivery of the equipment. All payments shall be made by cash or cheque, allowing five (5) working days for cheque clearance.
 - 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 payable at any time after delivery of the equipment. All payments shall be made within thirty (30) days of such invoice.
- 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 withdrawal of the Customers credit facility.
- All payments under the Contract, shall be made without deduction or offset for any alleged shortfall in delivery, defect in quality or failure to conform to the Customer's 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 with respect of the payment of all sums due thereafter, any payment made by mail shall be at the sole risk of the Customer until such amount is credited to the Owners account.
- The Customer expressly acknowledges and accepts that the Owner shall be entitled to increase the price with respect to clause **22**, 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 to the Customer within fourteen (14) days before the date of the revised rental charges take effect.

27. If the Customer fails to pay the full price or any portion of the price by the specified date, as per these conditions, the Customer shall also be responsible for the following in addition to the outstanding amount:
 - a. Interest on the unpaid price and any other overdue amounts, calculated at a rate of fifteen percent (15%) per annum, in accordance with these conditions, and
 - b. All additional administrative costs incurred by the Owner in recovering the late payments from the Customer calculated at a rate of **INR 2,000 (Two Thousand) per day** (with a **minimum charge of INR 60,000**), with all such amounts accruing from the payment due date until full payment is made.
28. 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 be liable to pay or collect, other than a tax on the Owners net income.
29. 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.
30. Where the Customer has failed to pay an amount due under this Contract within thirty (30) days required under clause **22/23**, the Owner may dispose 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. In case under this clause such breach in payment is not remediable, the shareholders of the Customer in their personal capacity shall automatically become liable to pay any outstanding invoice(s).

Tax

31. All prices in this quotation are exclusive of taxes, including but not limited to VAT, GST or any other relevant tax levy. Such taxes may apply at the time of quotation, invoicing, payment or at any other time as specified by the relevant Government Authority. Furthermore, the applicable tax rate will be the rate in effect at the relevant time.

Property

32. In respect of any Equipment for hire, the Equipment shall at all times remain the property of the Owner and Customer shall have no rights to the Equipment other than for hire purposes. The Customer must not allow or engage in any actions that may negatively impact the Owner's rights to the equipment.
33. For Equipment sold, Ownership of such Equipment shall not pass to the Customer until full payment has been made to the Owner in accordance with these conditions.
34. Until the Ownership of the Equipment sold passes to the Customer in accordance with these conditions, the Customer shall hold them on trust and shall store them separately from any similar Equipment in such a way that they remain identifiable as the Owners property.
35. 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 be supplied to the Customer, the Customer warrants that the use of those designs, drawings or specification does not infringe the right of any third party.
36. The Customer must not use the Equipment for which they are not expressly designed for 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. Remove or interfere with any identification mark or plates affixed to the Equipment and not attempt or allow others to do the same.

Insurance

37. For the Equipment hired, the Customer must, throughout the duration of the Contract, maintain insurance with a reputable insurance company against loss or damage, including third-party risks, for the full replacement value of the Contract for the duration of the Contract. The Customer will indemnify the Owner for any amounts that has not been recovered or covered by the insurance company.
38. For Contract-hire, the Owner will ensure that the employees as part of the Contract-hire are duly insured. However, the Equipment must be insured by the Customer for the duration for which the Equipment remains on site.

Termination

39. The Owner reserves the right to terminate this Contract if any of the following occurs:
 - a. Customer fails to meet any financial obligations when due,
 - b. The Customer (being a company) enters into liquidation, or;
 - c. Legal action is taken again the Equipment or any part of it, or against the Customer's premises, then any hire under the Contract shall automatically terminate without notice. Any subsequent payments accepted by the Owner, without knowledge of such termination, shall not affect the validity of this clause,
 - d. The Customer commits a breach of any terms of the Contract and if, the Customer fails to remedy the breach within fourteen (14) days after receiving written notice from the Owner.
 - e. The Owner decides for any other reasonable cause, the Owner shall have the right to terminate the Contract immediately.
40. At the end of the hire of any Equipment or upon earlier repudiation or termination of the Contract, the Equipment must be returned to the Owner in accordance with clauses **47 and 52** inclusive irrespective of any amount paid prior,
41. The Customer shall not be entitled to claim for loss of profit or breach of Contract in respect of any termination of this Contract.
42. In the case of termination of this Contract, a **termination letter** will be issued by the Owner to the Customer, stating the reason for termination and the date of termination of Contract.
From this date:
 - a. The acceptance of any Equipment returned by the Customer, after fourteen (14) days of termination of this Contract, to the Owner is at the sole and absolute discretion of the Owner, and;
 - b. Any returned Equipment shall be charged at the rate agreed to by both parties in the quotation, from the date of termination to the date of return.

Return of Equipment

43. At the end of the hire of Equipment or earlier repudiation or termination in accordance with the Contract, all Equipment must be promptly returned to the Owners premises (unless otherwise specified by the Owner) in good repair, clean and in sound condition (except for fair wear and tear).
44. The Customer shall ensure the safe keeping, supervision and custody of the Equipment until it is returned to the Owner.
45. The Customer shall be responsible for the loading of all Equipment being returned in compliance with all relevant laws and regulations, as per clause(s) **57/58**. If the

Owner determines that the Equipment has not been safely loaded, the Owner reserves the right to return the relevant Equipment to the Customer for safe loading, and the hire period will continue until the Equipment has been safely returned to the Owner. The Owners assessment of the Equipment's condition, made reasonably, shall be binding on the Customer.

46. The Customer shall fully reimburse the Owner for all charges and costs incurred by the Owner in respect of any 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 as of the date of repudiation or termination.
47. If the Customer fails to return the Equipment within fourteen (14) days of being obligated to, the Owner may, without notice, retake possession of such Equipment and shall have the right to enter into any premises, without notice, occupied by or under the control of the Customer.
48. If the Equipment is situated on premises which are occupied or under the control of a Third Party, the Customer shall ensure that it has made sufficient arrangements with the Third Party to enable the Owner to access the premises in Order to retrieve the equipment, as per this clause.
49. Without prejudice to the Owners rights to claim damages, the Customer shall on termination or repudiation of this Contract become immediately liable to pay the Owner all outstanding rental fees and any other amounts due under this Contract, as well as any costs and expenses incurred by the Owner in locating, repossessing, recovering, restoring the Equipment and/ or collecting payments owed under this Contract, including but not limited to admin costs as per clause **27b**.

Sub-Contracting and Assignments

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

Miscellaneous

51. The Owner has designed, manufactured or arranged for the manufacture of the Equipment and supplied it to the Customer based on written assurance that the Customer will ensure the Equipment will be safe and without health risks when being erected, used, cleaned, maintained and dismantled by the Customer, its employee and/ or any Third Party.
52. The Owner shall not be liable to the Customer in any civil proceedings brought by the Customer against the Owner under any health and safety legislation or regulations where such exclusion of liability is permitted by law.
53. The Customer shall indemnify and keep the Owner indemnified against any type of liability, claim, demand against the Owner in respect of or in connection with any breach of Contract terms by the Customer under any law, regulation, Order or direction made thereunder.
54. The right and remedies of the Owner shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance, extension of time or by any failure or delay in asserting or exercising those rights or remedies.
55. If any provision in the Contract is deemed void, illegal, invalid or unenforceable, whether in whole or in part, by any law, Court or tribunal, such provision shall be considered severed to that extend. However, the legality, validity and enforceability of the remaining provisions of the Contract shall remain unaffected.
56. Any event such as, but not limited to, disasters, fire, war acts of terrorism, civil commotion, strikes, governmental regulations, pandemics or other occurrences beyond the reasonable control of either Party shall occur and make impractical the performance of the Parties' obligations under this Agreement shall be defined as ("Force Majeure"). Neither Party shall be liable as a result of any delay, due through cases of Force Majeure, to perform under its obligations under the terms of the Quotation. If such an event occurs and extends for a period beyond five (5) consecutive days, the Owner shall have the absolute right, without limiting its other rights or remedies, to terminate the Quotation, and subsequently the terms under this Agreement, with immediate effect by giving written notice to the Customer.

Dispute Resolutions

57. The governing law of this Contract shall be the substantive **laws of the Republic of India**.
58. Any dispute arising out of or in conjunction with this Contract, including any question regarding its existence, validity or termination, **shall be subject to the exclusive jurisdiction of the courts of Mumbai, Maharashtra, India**.

Order Acceptance

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

Quotation Reference on LPO

60. The quotation reference number must be mentioned on the Customer's LPO, without which the LPO will not be accepted.

Third Party Inspection

61. All third-party inspections of the Equipment are to be arranged by the Customer and payment of such services are under the Customer's responsibility.