

## ALTRAD RMD KWIKFORM CONDITIONS OF SITE INSPECTION

### Between:

“**Customer**” means the Customer named in the Checklist.

“**Owner**” means Altrad RMD Kwikform Limited (registered no.

00301199) whose registered office is at Brickyard Road, Aldridge, Walsall, West Midlands WS9 8BW.

### DEFINITIONS

“**Checklist**” means Falsework and propping, visual inspection of erected Altrad RMD Kwikform Equipment Inspection Form.

“**Conditions of Hire**” means the Contract comprising all the terms of hire and/or sale of Equipment between the Owner and the Customer referenced by Contract/Order number in the Checklist.

“**Contract**” means the Checklist and these Conditions.

“**Drawings**” means the Owner's drawings referred to in the Checklist.

“**Equipment**” means all plant, machinery, equipment and components which the Owner has agreed to sell and/or hire to the Customer as set out in the Conditions of Hire.

“**Inspection**” means a purely visual inspection, on one occasion only, from ground level and/or from any designated safe means of access, of the general arrangement and erection by others of the Equipment shown on the Drawings, but excluding the checking of any setting out, site welds, packing pieces and of the torque applied to any bolts and/or connectors.

### 1 INTERPRETATION

- 1.1 Headings will not affect the construction of this Contract.
- 1.2 In these Conditions, references to persons include an individual, company, corporation, firm or partnership and a reference to the singular includes the plural and vice versa as the context admits or requires.

### 2 CONTRACT

- 2.1 Upon acceptance of this Contract by the Customer in accordance with Clause 3.1, the Owner agrees to undertake an Inspection, in the form of a Checklist, of the erection of the Equipment.
- 2.2 The Contract comprises all the terms of the contract between the Owner and the customer to the exclusion of all other terms and conditions, including without limitation any of those terms, which the Customer may purport to apply under any purchase order, confirmation of order or other similar document. If any such other terms and conditions do apply, the customer agrees to waive irrevocably all its rights under such other terms and conditions.

### 3 ACCEPTANCE & WARRANTY

- 3.1 A written instruction by the Customer to the Owner to conduct the Inspection shall constitute acceptance of this Contract by the Customer.
- 3.2 No conduct of the Owner shall constitute acceptance of any terms put forward by the Customer, and no addition to or variation of this Contract shall be binding on the Owner unless agreed to and signed in writing by a director of the Owner.

### 4 OWNER'S LIABILITY

- 4.1 The Owner shall not be liable for any loss of whatever nature (whether or not such loss or damage was foreseen, direct, foreseeable, known or otherwise), including loss of anticipated profits, loss of actual profits (direct or indirect), loss of anticipated savings, loss of business, loss of goodwill or for any indirect, special or consequential loss or damage, howsoever caused (“**Losses**”) or any Losses arising as a result of any third party bringing a claim in respect of any nature whatsoever.
- 4.2 For the avoidance of doubt, the Owner shall be under no liability under this Contract:
  - (a) in respect of any Losses arising from, wilful damage, negligence, abnormal working conditions, failure to follow the Owner's instructions, recommendations or restrictions on use (whether oral or in writing, set out in the Conditions of Hire or otherwise), misuse or alteration or repair of the Equipment without the Owner's written approval;
  - (b) in respect of any Losses arising from any delay in carrying out the Inspection;
  - (c) for any Equipment supplied under the Conditions of Hire;
  - (d) in relation to the Inspection of parts, materials or equipment not supplied by the Owner; or
  - (e) if the Customer makes any use of the Equipment otherwise than for the purpose set out in the Conditions of Hire.
- 4.3 Nothing in these Conditions shall exclude or limit the Owner's liability for death or personal injury where or to the extent that such death or personal injury is attributable to the Owner's negligence or fraudulent misrepresentation or for any other liability which cannot be limited in law.
- 4.4 These Conditions set out the entire liability of the Owner (including any liability for the acts or omissions of its sub-Contractors and any member of its group) in respect of any breach of the Contract and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 4.5 Notwithstanding clauses 4.2, 4.3 and 4.4, the Owner's maximum aggregate liability arising out of or in connection with the performance or contemplated performance of the Contract whether for negligence or breach of contract or any case whatsoever shall be limited to £1,000. The Customer agrees and warrants that the Customer shall insure against or itself bear any Losses for which the Owner has excluded or limited its liability in this Contract and that the Owner shall have no further liability to the Customer.
- 4.6 The Customer further agrees to indemnify the Owner for any Losses above £1,000.

### 5 SUBCONTRACTING AND ASSIGNMENT

- 5.1 The Owner may assign, charge, sub-Contract, transfer or sub-let the Contract or any part of it to any person.
- 5.2 The Customer shall not be entitled to assign, charge, sub-Contract, transfer or sub-let the Contract or any part of it without the prior written consent of the Owner.

### 6 INSURANCE

- 6.1 The Customer undertakes that it shall notify its insurers that the Equipment is on hire from the Owners and request the insurers to endorse a note of such interest on the policy of insurance naming the Owner under any project policy or waiver of rights.

### 7 MISCELLANEOUS

- 7.1 The Customer agrees and acknowledges that he will ensure that the Owner has the required permissions to access the site where the Inspection is to occur and will ensure that the Owner has access to undertake the inspection safely and without health risk.
- 7.2 All notices between the parties about the Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission to each party's registered office (marked in the Owner's case for the attention of the Managing Director) or such other address as shall be notified to the other party by that party in accordance with this Clause.
- 7.3 Such notices shall be deemed to have been received 2 days after posting if forwarded by mail and the following business day if forwarded by facsimile transmission.
- 7.4 The rights and remedies of the Owner shall not be diminished, waived or extinguished by the granting of any indulgence or forbearance or extension of time by the Owner or by any failure or delay by the Owner in asserting or exercising any such rights or remedies.
- 7.5 The waiver by the Owner of any breach of the Contract shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 7.6 If any provisions in the Contract shall be held to be void, illegal, invalid or unenforceable in whole or in part under any enactment or rule of law such provision or part shall to that extent be deemed not to form part of the Contract but the legality, validity and enforceability of the remainder of such Agreement shall not be affected.
- 7.7 Nothing in the Contract shall confer or purport to confer on any third party any benefit or right to enforce any term of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 7.8 The Contract shall be governed and construed in all respects in accordance with the laws of England and the Owner and Customer irrevocably submit to the exclusive jurisdiction of the English Courts.