
MEVA Terms and Conditions

RENTAL AND SALE AGREEMENT TERMS AND CONDITIONS

- 1) **General.** MEVA Formwork Systems, Inc., is herein referred to as "COMPANY". These Terms and Conditions consist of terms and conditions applying generally to this Agreement; terms and conditions applying specifically to rental of EQUIPMENT hereunder and terms and conditions applying specifically to purchase of EQUIPMENT hereunder.
- 2) **Payment.** Payments due hereunder from CUSTOMER shall not be subject to any abatement, recoupment, defense, claim, counterclaim, reductions, set-off, or any other adjustment of any kind for any reason, including without limitation any amount due or alleged to be due to, or by reason of, any past, present, or future claims which CUSTOMER may have against COMPANY, or any other person or entity for any reason.
- 3) **Acceptance.** Written acceptance, use or retention of the EQUIPMENT, or payment of either the purchase price or rental price hereunder shall be conclusive evidence of CUSTOMER's agreement to be bound by the terms and conditions contained herein. In no event shall shipment of EQUIPMENT hereunder constitute acceptance by COMPANY of any terms and conditions in addition to or different from those provided herein.
- 4) **Default.** Any one or more of the following will constitute an Event of Default under this agreement: (a) CUSTOMER fails to pay any sum to be paid under this Agreement when due; (b) CUSTOMER fails at any time to procure or maintain any insurance coverage required by this Agreement; (c) CUSTOMER becomes insolvent (i.e. unable to pay its debts as they mature or in accordance with customary business practice) or any proceeding in bankruptcy, insolvency or receivership is commenced or instituted by or against CUSTOMER and is not discharged within thirty (30) days thereof; (d) a termination, cessation, or liquidation of the CUSTOMER's business; (e) any representation, warranty, or statement of material fact including any document, instrument, or other paper, made or furnished to COMPANY or COMPANY's representative by or on behalf of the CUSTOMER, is false or misleading in any material respect or (f) CUSTOMER breaches any terms, conditions or promises contained herein.
- 5) **Remedies upon Default.** Upon the occurrence of an Event of Default above, all rights of the CUSTOMER shall terminate and at any time thereafter, COMPANY may, at its option, with or without notice, declare all payments remaining to be paid under this Agreement and all other amounts payable to COMPANY under this Agreement to be immediately due and payable and may proceed to enforce payment of such obligations and to exercise any and all rights and remedies provided for by this Agreement, by any statute, or otherwise available by law, in equity or in a bankruptcy or insolvency proceeding, including without limitation the following: (a) proceed in court to enforce performance by CUSTOMER or to recover from CUSTOMER any and all damages and expenses which COMPANY has sustained, including without limitation, reasonable attorneys' fees and collection agency fees; (b) terminate CUSTOMER's rights under this Agreement; and/or (c) take possession of the EQUIPMENT without legal process. CUSTOMER hereby voluntarily and knowingly waives, to the extent permitted by law, any and all rights to notice and/or hearing prior to any retaking of possession of the EQUIPMENT by COMPANY, its agents, or assigns upon default of CUSTOMER. All remedies of the COMPANY hereunder are cumulative and may be exercised concurrently or separately.
- 6) **Use of Equipment.** CUSTOMER agrees to erect, maintain and use the EQUIPMENT in a safe and proper manner and in conformity with the applicable Safety Guidelines and all laws and ordinances pertaining thereto. CUSTOMER agrees that use of the EQUIPMENT shall be construed as an acknowledgment by CUSTOMER that when delivered to CUSTOMER by COMPANY the EQUIPMENT was in good order and repair, and was in all respects adequate, sufficient and proper for the purposes for which CUSTOMER rented or purchased such EQUIPMENT. The EQUIPMENT will not be removed from the premises of the job address shown on the first page hereof unless agreed to in writing by the parties hereto.
- 7) **Maintenance of EQUIPMENT.** The CUSTOMER shall at all times and at its own expense keep the EQUIPMENT in good, safe, and efficient working order, repair and condition. CUSTOMER agrees that it shall discontinue use of damaged EQUIPMENT immediately. If EQUIPMENT is rented hereunder, CUSTOMER shall return it to the COMPANY for exchange or adjustment. In the event of damage, loss, modification or destruction of the EQUIPMENT rented hereunder, or any part thereof, whether or not such event is the fault of CUSTOMER, CUSTOMER shall pay to the COMPANY a sum equal to COMPANY's current list price for any and all such EQUIPMENT. It is understood that any and all such rented EQUIPMENT, damaged or destroyed shall remain the property of the COMPANY.
- 8) **Warranties.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS AND THE ORDER CONFIRMATIONS, COMPANY MAKES NO WARRANTIES WITH RESPECT TO THE EQUIPMENT EITHER EXPRESS OR IMPLIED, AND MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE. IN NO CASE SHALL COMPANY BE LIABLE FOR CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY KIND.
- 9) **Indemnification.** The CUSTOMER agrees to fully protect, defend, indemnify and hold harmless the COMPANY from all actions, suits, proceedings, claims, costs, damages, liens, liabilities and expenses, including reasonable attorneys' fees, which may be brought or made against COMPANY and which in any way arise out of, or by reason of, or are claimed to arise out of or by reason of the manufacture, ownership, installation, maintenance, sale, disposition, use or misuse of the EQUIPMENT hereunder, excepting only such actions, claims, costs, damages, liabilities and expenses resulting from the sole negligence of the COMPANY. The intent hereof is that the CUSTOMER shall fully indemnify and hold harmless the COMPANY to the maximum extent allowable by law. CUSTOMER agrees and understands that the furnishing of services and/or EQUIPMENT by COMPANY pursuant to this Agreement is good, valuable and valid consideration for CUSTOMER's indemnity obligations arising under this Agreement. CUSTOMER waives any and all rights it may have to immunity from an action, claim or suit for recovery or contribution by COMPANY which arise out of any law, statute, rule or regulation.

-
- 10) **Insurance.** CUSTOMER will provide and maintain at its sole cost and expense, property insurance on the EQUIPMENT for the full replacement value of the EQUIPMENT and liability insurance for any death, injury or damage arising out of the erection, use or removal of the EQUIPMENT. Certificates of insurance or other evidence satisfactory to COMPANY, including the original or certified copies of the actual policies, showing the existence of insurance in accordance with the terms of this Agreement and terms, conditions, and payments therefor will be delivered to COMPANY immediately upon COMPANY's request.
 - 11) **Accident Notification.** CUSTOMER agrees to notify COMPANY immediately of any accident involving the EQUIPMENT and resulting in injury, death or property damage. CUSTOMER understands that time is of the essence after an accident to promptly investigate and isolate the physical evidence (including the taking of photographs and other measures to prevent the spoliation of physical evidence) and will unconditionally cooperate with COMPANY to limit the extent of damages resulting from such accident. CUSTOMER is deemed to have knowledge of the accident from the time that the CUSTOMER, its employees, agents and representatives, including the owner (if different from the CUSTOMER) and contractor, subcontractor, suppliers or vendors who report to the CUSTOMER learn of the accident.
 - 12) **Assignability.** This Agreement may not be assigned by CUSTOMER by its own act or by operation of any law without the prior written consent of COMPANY.
 - 13) **Non-Waiver.** COMPANY's failure at any time to insist upon strict performance by CUSTOMER of any of the terms and conditions of this Agreement shall not be construed as a waiver of COMPANY's right to demand strict performance. The express waiver of one provision of this Agreement shall not be deemed a waiver of any other provision of this Agreement.
 - 14) **Notice.** Any notice to be given or documents to be delivered by either party to the other shall be deemed to have been effectively given, received or delivered if made (a) in writing and delivered personally; (b) by certified mail, return receipt requested, to the intended recipient at the appropriate address set forth on the order confirmation.
 - 15) **Notice.** Any notice to be given or documents to be delivered by either party to the other shall be deemed to have been effectively given, received or delivered if made (a) in writing and delivered personally; (b) by certified mail, return receipt requested, to the intended recipient at the appropriate address set forth on the order confirmation.
 - 16) **Force Majeure.** COMPANY shall not be liable for any delay in or failure of performance hereunder due to any contingency beyond its control, including an act of God, war, mobilization, insurrection, rebellion, civil commotion, riot, act of extremist or public enemy, sabotage, labor dispute, lockout, strike, job action, explosion, earthquake, fire, flood, weather conditions, accident, drought, equipment failure (other than EQUIPMENT supplied under this Agreement), power failure, inability to obtain suitable or sufficient labor or material, delay of carrier, embargo, law, ordinance, rule or regulation, whether valid or invalid, or other cause beyond its reasonable control. CUSTOMER shall be obligated to purchase or lease, as applicable, at a later date that portion of the goods which COMPANY is unable to deliver because of any of the aforementioned causes beyond COMPANY's control if the goods are manufactured to fit the CUSTOMER's specifications and are not of a size or grade which the COMPANY ordinarily uses or manufactures.
 - 17) **Entire Agreement.** This Agreement together with the Safety Guidelines, which are hereby incorporated by reference, comprise the entire contract between the parties and it is acknowledged that there are no other understandings, representations, warranties, promises, verbal or otherwise, pertaining to this Agreement or the EQUIPMENT, which are not incorporated herein expressly by reference or by a rider signed by the parties and attached hereto. No waiver, alteration or modification hereof shall be binding unless in writing and signed by the duly authorized representatives of the parties hereto. If this Agreement or any provision hereof shall be deemed invalid, illegal, or unenforceable in any respect or in any jurisdiction, the validity, legality, and enforceability of this Agreement in other respects and in other jurisdictions shall not be in any way impaired or affected thereby. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

ADDITIONAL RENTAL TERMS AND CONDITIONS

- 1) **Ownership of EQUIPMENT.** The EQUIPMENT shall at all times remain and be the sole and exclusive property of COMPANY, and CUSTOMER shall have only the right to use it under the terms and conditions contained herein. The EQUIPMENT shall not be transferred, rented or used by any person other than CUSTOMER
- 2) **Rental Rate.** The EQUIPMENT will be billed at published branch rental rates in effect at the time of shipment, including all applicable local, State and Federal taxes unless otherwise specified in writing. (A credit will be issued upon furnishing evidence of a tax exemption.) Detention time will be charged, at the published hourly rate, after one half hour. If at any time CUSTOMER is in arrears in its payments to COMPANY, COMPANY may in its sole and unfettered discretion apply any payment received from CUSTOMER first to the payment of unpaid prior obligations and thereafter to the lease payment for the current month.
- 3) **Terms of Rental Payment and Period.** Net 30 days from date of invoice. A service charge of 1-1/2% per month or the maximum rate allowable by law, whichever is lesser, shall be charged on all overdue accounts. COMPANY will invoice CUSTOMER separately for rent. Rentals will be prorated after the first Rental Period. The Rental Period shall be 28 days unless otherwise specified. This Rental Period begins when the EQUIPMENT is

picked up or shipped. The Rental Period ends when EQUIPMENT is returned to the COMPANY or purchased by the CUSTOMER. In the event of shortages, this Agreement shall terminate as to such CUSTOMER when the CUSTOMER has notified the COMPANY of the shortage and paid for such EQUIPMENT. COMPANY shall have the right, without notice, to terminate this Agreement if there occurs an Event of Default and CUSTOMER shall forthwith deliver the EQUIPMENT to the COMPANY at the address shown on the reverse side of this Agreement, in good order and condition, ordinary wear and tear caused by reasonable and proper use excepted; or the COMPANY shall have the right to repossess the EQUIPMENT. CUSTOMER hereby agrees to indemnify and hold COMPANY and its agents harmless from all claims by CUSTOMER or any other person arising out of such repossession.

- 4) **Notification of Claims.** CUSTOMER shall inspect the Products upon their arrival at the Project location. CUSTOMER shall notify COMPANY in writing of any claim for breach of warranty, nonconformity, or any other claim not later than three (3) days after the Products arrive at the Project location. CUSTOMER will afford COMPANY prompt and reasonable opportunity to inspect the Products. At COMPANY's request, CUSTOMER will return to COMPANY any allegedly defective Product for repair or replacement. If the Product is indeed defective, COMPANY shall bear the shipping expense (including insurance as appropriate) for transporting the Product between CUSTOMER and COMPANY; otherwise, CUSTOMER shall bear the shipping expense. No returns will be accepted by COMPANY without prior written authorization from COMPANY.
- 5) **Contaminated EQUIPMENT.** The CUSTOMER agrees to fully decontaminate all EQUIPMENT exposed to asbestos, radiation, toxic or hazardous substances or any other material that would preclude its further use by COMPANY. In the event the EQUIPMENT is contaminated by asbestos, radiation, toxic or hazardous substances, CUSTOMER agrees to pay the costs associated with or incurred pursuant to any decontamination and cleanup charges, or for the value of the EQUIPMENT if it cannot be decontaminated. If the EQUIPMENT is not decontaminated when it is returned to COMPANY, then the EQUIPMENT will be returned to CUSTOMER, and CUSTOMER agrees to pay a sum equal to COMPANY's current list price plus handling charges, for any and all such EQUIPMENT.
- 6) **Access to EQUIPMENT.** At COMPANY's sole option, and without any obligation on its part, COMPANY shall at all times have the right of free access to the EQUIPMENT for the purposes of inspecting it and observing its use or operation or determining the nature and extent of its use.

ADDITIONAL SALES TERMS AND CONDITIONS

- 1) **Sale.** COMPANY hereby sells to CUSTOMER under the terms and conditions herein, the EQUIPMENT specified on the reverse side of this Agreement.
- 2) **Sales Price.** The EQUIPMENT is sold at published branch prices in effect at the time of shipment plus all applicable local, State and Federal taxes, unless otherwise specified in writing. (Unless otherwise stated that stated price is F.O.B. at the COMPANY location stated on the reverse side hereof.)
- 3) **Terms of Purchase Payment.** Net 30 days from date of invoice. A service charge of the lesser of 1-1/2% per month or the maximum rate allowed by law, shall be charged on all overdue accounts.
- 4) **Title of Purchased EQUIPMENT.** Regardless of the shipping arrangements made, title and risk of loss shall pass to CUSTOMER upon delivery to a carrier at COMPANY's location stated on the reverse side hereof. Notwithstanding the foregoing, CUSTOMER hereby grants to COMPANY a purchase money security interest in the EQUIPMENT and agrees to execute any financing statement in favor of COMPANY necessary to secure COMPANY'S retained security interest not later than 20 days following the date that title passes to CUSTOMER.