



## GENERAL TERMS AND CONDITIONS OF CONCREMOTE®

(As of August 2019)

### 1. Applicability of these GTC

1.1 Doka's General Terms and Conditions of Sale, Rental and Delivery apply accordingly, supplemented by these General Terms and Conditions for CONCREMOTE (hereinafter referred to as "GTC"). In case of contradictions these GTC shall prevail.

Unless otherwise agreed in writing the GTC apply exclusively and also to all future business relations between Doka ("us" or "we") and the customer ("Customer") even if they are not explicitly referred to. These GTC are an integral part of any and all contracts concluded between us and the Customer in connection with the CONCREMOTE system.

1.2 Any subsidiary agreements, supplements or amendments to these GTC or any other contract documents shall always have to be mutually agreed in writing in order to take effect.

1.3 The Customer waives in full the application of its general terms of business, conditions of purchase or other contractual provisions not expressly agreed to by Doka in writing.

1.4 All documents relating to the contractual relationship in order to be valid shall have to be submitted in English.

1.5 Any and all terms and definitions used in these GTC or in other contract documents shall be interpreted according to the laws of Austria and to general custom in Austria.

1.6 Should a provision or part of a provision of these GTC be or become ineffective, this shall have no effect on the validity of the remaining provisions. In this case, the Customer is obliged to replace the ineffective provision, upon written agreement with us, by a provision whose economic effect comes closest to the purpose intended by the ineffective provision and which is legally admissible.

### 2. Cost estimates, offer and acceptance

2.1 We prepare our cost estimates and cost assessments to the best of our knowledge. However, we assume no liability or warranty for their correctness or completeness.

2.2 We prepare cost estimates or cost assessments in return for payment, unless otherwise agreed with the Customer in writing.

2.3 We do not guarantee that our offers are free from typing, calculation and other errors.

2.4 Our offers can only be accepted in writing. They are not binding, unless they have been expressly referred to as binding.

2.5 The offer signed by the Customer is to be sent to us. The contract between us and the Customer enters into effect only once we confirm the order in writing. The order is also deemed to have been confirmed if we deliver the devices ordered by the Customer.

2.6 The assertion of error (*Irrtum*) or *laesio enormis* on the part of the Customer shall be excluded.

2.7 We are not obliged to verify the authority of the Customer's representative responsible for the contract, but may rely on the validity of the power of attorney granted to such representative.

2.8 Prices are quoted in EUR/piece, in case of rental in EUR/piece/day, ex works (Incoterms 2010) and exclusive of any and all applicable taxes or costs related to the shipment, including without limitation, all packing, boxing, cartage, freight, insurance, brokerage, and all taxes, fees, and duties, all of which are to be carried by the Customer.

### **3. Description of the services subject to these GTC**

3.1 The system CONCREMOTE offers real-time information about the compressive strengths of the concrete based on the temperature of the concrete. The system is offered with the following options:

#### **3.1.2 Rental of CONCREMOTE**

The rental option for the system CONCREMOTE is composed of the following integral parts:

- Rental of measurement devices and the required calibration boxes (together "Devices"); as well as
- the analysis of the data collected by each device in the course of the measurement (service) including access to the CONCREMOTE Web Portal (the "Web Portal") and/or CONCREMOTE App (the "App") (both incl. several features e.g. forecasts), availability of the support desk and the transfer of data between the devices and the Web Portal/App.

These two parts of the product are inseparable and are exclusively offered together as a package. The product CONCREMOTE is an indivisible package product. It is not possible for the Customer to withdraw (partly) from the contract with regard to only one part of the product.

#### **3.1.3 Sale of CONCREMOTE**

The sale option for the system CONCREMOTE is composed of the following parts:

- Measurement devices and the required calibration boxes (together "Devices")

For an extra (periodically) charge the following services may be offered:

- The analysis of the data collected by each device in the course of the measurement (service) including access to the Web Portal and/or App (both incl. several features e.g. forecasts), availability of the support desk and the transfer of data between the devices and the Web Portal/App.

These two parts (device/analysis) of the product are separable and may be offered together as a package or separately.

#### **3.1.4 Calibration Service**

Both for the rental and sale option of the system CONCREMOTE Doka offers to conduct the calibration of the used concrete mixes as an optional service subject to additional fees. We organize and provide the necessary calibration boxes and cover the cost for the calibration boxes and the concrete specimen (e.g. cubes/cylinders). The result will be displayed to the Customer in the form of a calibration curve in the Web Portal and/or App.

For this purpose the Customer shall submit the following information to Doka: concrete producer, concrete mixing plant, target value/strength, strength value, contact person at producer/mixing plant.

**The Customer acknowledges and agrees that this technical data will then be submitted to a concrete laboratory technician (*Betonlaborant*) by Doka for analysis purposes.**

Insofar as this may entail the processing of personal data kindly consult our Data Privacy Statement at <http://www.doka.com/concremote>.

3.1.5 In addition to our CONCREMOTE system, we offer accessories for purchase and on-site training.

### **3.2 Measurement devices**

3.2.1 In the context of the CONCREMOTE system, we rent or sell measurement devices to the Customer. These are slab sensors and/or cable sensors. In addition to the devices, we also provide, rent or sell calibration boxes to the Customer for calibrating the concrete mixes used (sensors and calibration boxes are hereinafter together referred to as "Devices"). Each Device has an individual serial number, as well as an integrated GSM/GPS module. Thus each device may be located. For information on the use of personal data, including possible location data, kindly consult our Privacy Statement.

3.2.2 We deliver the ordered Devices. As part of the delivery, we provide our Customer with operating instruction on the operation and functioning of the Devices as well as a user manual for the Web Portal and/or App. Above mentioned documents can be downloaded at any time from our website [www.doka.com/concremote](http://www.doka.com/concremote) and the Web Portal <http://concremote.doka.com>.

3.2.3 By signing our delivery note, the Customer confirms to have received the ordered slab or cable sensors, calibration boxes, operating instruction on the operation and functioning of the Devices as well as the user manual for the Web Portal/ App.

3.2.4 Upon handing over the Devices and other CONCREMOTE hardware to the Customer, the risk for their destruction or damage passes on to the Customer.

3.2.5 The Customer shall comply exclusively with the specifications made in the operating instruction on the operation and functioning of the Devices and the user manual on the Web Portal/ App. Any use of the Devices or the Web Portal or App contrary to the specifications made by us, included in the delivery and published on our website, shall be exclusively at the Customer's own risk and any liability on our part shall be excluded. The Customer shall indemnify and hold harmless Doka against any third party claims for damages resulting from such uses contrary to the specifications made by Doka.

### **3.3 Rental Conditions**

3.3.1 Should the Devices be damaged when used contrary to the specifications made by us, included in the delivery and published on our website, the Customer shall be obliged to reimburse us for the damage thus incurred. It shall be the Customer's responsibility to prove that he used the Devices according to the specifications made by us, included in the delivery and published on our website.

3.3.2 For the entire duration of the contract, we are entitled at any time during regular business hours to inspect and check our Devices and the Customer shall obtain any relevant approvals to do so.

3.3.3 The period for charging a rental fee shall start on the date of the delivery note and shall end on the day on which we have regained unrestricted custody of the Devices and calibration boxes rented out by us. We will confirm this time in writing on a return delivery note. Such confirmation on a delivery note only confirms receipt, but in no event condition of the CONCREMOTE system.

The minimum rental period is one month.

---

3.3.4 After the end of the contract, the Customer shall immediately return the Devices to us cleaned and fully functional or request us to pick up the Devices.

3.3.5 Only once we have regained unrestricted custody of the Devices rented out by us and confirmed this in writing on a delivery note, the risk for their destruction or damage passes on to us.

3.3.6 Once we have regained custody of the Devices rented out by us, we will thoroughly check and document their state, in particular their functionality. In case the Devices are damaged, we are entitled to demand the reimbursement of repair costs or compensation for a loss of value. If it is no longer possible to repair the Devices by applying economically reasonable means, we are entitled to require the Customer to pay the scheduled sales price of the relevant Devices plus any costs necessary in order to prove such status (expert opinion etc).

3.3.7 Transportation costs for delivery and pick up of the Devices, if required, shall be borne by the Customer.

### 3.4 Analysis of data

The technical data measured by the Devices are transmitted to our computing centre via mobile data transmission and analysed according to the concrete's compressive strength, temperature and maturity. The analysis of the data collected by each Device in the course of the measurement will be made available on the Web Portal and App.

**The Customer acknowledges and agrees that this analysis may entail the comparison and matching with technical data accrued from other sources (e.g. other customer's devices, previous measurements, etc.).** This analysis of data from Devices is strictly limited to technical information relating to the Customer's project and does not include personal aspects relating to the respective user. Insofar personal data of the user are processed (e.g. time and location of login into the Web Portal or App) they merely constitute an unavoidable by-product, not the object of processing. For more information see our Privacy Statement.

The technical basis for the calculation of concrete strength is the maturity method according to de Vree, Arrhenius or Nurse Saul representing the current state of the art. Our system allows us to offer the Customer measurement data on the temperature and calculation results on the development of the strength of fresh concrete. The Web Portal and App provide also additional features for the Customer, e.g. forecasts.

### 3.5 Accessories

The Customer can additionally purchase accessories from us such as probes, cables and batteries. Accessories are charged in EUR/piece. The acquisition of accessories gives rise to a separate purchase agreement. The purchase price is therefore charged to the Customer separately. Our General Terms and Conditions regarding Sale, Delivery and Rent *available on <https://www.doka.com/gtc>* are agreed to apply in such cases.

### 3.6 On-site training

The Customer can, in addition to the system CONCREMOTE, order a detailed training on how the Devices and the Web Portal and App work and how to use and operate them. We offer this additional service for a flat fee, which will be charged together with the sales price or rental and service fee for the CONCREMOTE contract. The on-site training service is subject to the general terms and conditions of CONCREMOTE. The on-site training is limited to the explanation of the written instructions of Doka. Therefore we assume no liability for any further information provided by our employees. Notwithstanding the above provisions, Doka is not responsible for any misuse of the CONCREMOTE system.

Furthermore, Doka is not responsible for the individual or position-specific inspection of any system component.

#### **4. Handling of data analysis / technical support / limitation of liability**

4.1 The data analysis service is provided via the Web Portal and/or App. We do not warrant neither persistent availability nor a concrete percentage rate thereof. Availability of the Web Portal and/or App may be restricted for certain reasons including but not limited to updates, upgrades, internet outages and maintenance or may be temporarily ceased.

We apply safety precautions that are in accordance with current technological standards, but we assume no liability for any possible issues reasonably beyond our control, including but not limited to virus, hacking, malware.

The Customer can use the Web Portal and/or App as user interface for data input and output. In order for the Customer to use the Web Portal and/or App, we first have to activate the Customer (grant write and read privileges to the Customer). Therefore, the Customer needs to fill out an activation data sheet with all required data of users who shall be entitled to access the Web Portal/App and submit this to us. The customer undertakes to comply with applicable data protection laws and regulations, in particular, but not limited to the GDPR. This includes the obligation for the customer to provide a legitimate reason for the input of user data. Customer shall indemnify and hold Doka harmless for any failure with this obligation. Having received confirmed data sheet, Customer shall be activated at the beginning of the rental period (see item 3.3.3). No installation shall be required to use the Web Portal on the Customer's internet supported devices. Customer shall solely be responsible for maintaining the confidentiality and security of the User ID(s) and password(s) provided by us for the use of the Web Portal/App, and may not disclose such User ID(s) and password(s) to any third party, and shall fully be responsible for any and all activities, which occur under such User ID(s) and password(s) and in connection with its use or their uses. Customer further agrees that it will not permit others to access or use the Web Portal using such User ID(s) and password(s).

4.2 It shall be the Customer's responsibility to provide the necessary technical equipment (laptop, PC, etc.) as well as a working Internet connection in order to use the Web Portal/App.

4.3 Any data entered via the Web Portal are entered exclusively by the Customer. Solely the Customer is responsible for entered data. Customer shall solely be responsible for all damages resulting from information or data it, or its authorized users, enter into the Web Portal/App and shall indemnify and hold harmless Doka in this regard. Only after having received a relevant order by the Customer and after having sent a written order confirmation, do we enter data. In such a case, we shall immediately inform the Customer thereof in writing.

4.4 In addition to the Customer, read and write privileges in the Web Portal/App are granted only to us and our vicarious agent. In the case Calibration Services (see item 3.1.4) are requested access is granted to the concrete laboratory technician (*Betonlaborant*). If read and write privileges are to be granted to any persons other than those named above, it shall be the Customer's responsibility to grant such privileges.

4.5 Any and all transactions in the Web Portal/App are registered digitally and are retraceable.

4.6 The data collected by an individual Device can be stored in the device for the limited duration of 72 hours. If the data transfer is disrupted, the Customer has to restore operability of the device within these 72 hours. Otherwise, the data in the device are lost.

4.7 If the battery fails, all data stored in the device are lost. Furthermore, the device no longer records data. The Customer shall therefore ensure, of its own accord and at its own cost, that the devices have sufficient battery power at all times.

4.8 The Customer shall bear the risk of loss of data, in particular if data are transferred, due to battery failure or any other error of the device. If the loss of data or another problem in transferring the data causes delays on the construction site, any liability on our part for any damage, in particular any damage caused by delay, shall be excluded.

4.9 The Customer shall regularly check all components for operability at his sole responsibility and account. We have to be informed immediately of any technical problems.

4.10 The general contact person for the Customer is our relevant project manager. The name and the contact details of our project manager will be communicated to the Customer at the latest upon delivery of the Devices. In case of technical disruptions, the Customer's competent contact person shall be the Doka contact person.

4.11 Concrefy B.V. is our vicarious agent. It is responsible for analysing the data entered in the Web Portal/App and for providing technical support should there be problems with the Devices or the Web Portal/App.

4.12 The measurement data entered by the Customer in the Web Portal/App – provided that there are no disruptions – are processed, analysed and made accessible to the Customer via the Web Portal/App by our vicarious agent within app. 2 hours after having been received successfully (such response times being provided for information purposes only and do not constitute binding service level).

4.13 The analysis of the measurement data, the calculation of concrete strength and the transmission of data are done with the utmost care. The results of the analysis are accessible only to us, our vicarious agent as well as the Customer and any persons the Customer authorised to access such results. In the case Calibration Services (see item 3.1.4) are requested access is granted to the concrete laboratory technician.

4.14 The results of the analysis are calculated values based on the measurement data recorded by the Devices and entered in the Web Portal/App by the Customer on its own responsibility. The Customer shall be solely responsible for determining target values, correct data input, correct calibration of the concrete (except where Calibration Service is provided by Doka) as well as the correct use of the Devices. When using CONCREMOTE, the Customer shall demonstrably comply with any and all specifications made in relevant technical standards and guidelines.

4.15 Any change of composition, producer, concrete mixing plant or concrete type undertaken after a calibration conducted by Doka shall be exclusively at the Customer's own risk and any liability on our part shall be excluded. The Customer shall indemnify and hold harmless Doka against any third party claims for damages resulting from such changes.

4.16 If the Customer is responsible for an incorrect definition of the target value, incorrect and/or incomplete data input, wrong calibration of the concrete or incorrect use of the devices, we do not assume any liability for the correctness of the result of the analysis in this case. It shall be the Customer's responsibility to prove that the target value was defined correctly, the data was entered correctly and completely, the concrete was calibrated correctly and the devices were used correctly.

4.17 The Customer shall immediately check the result of the analysis transmitted by us. If the Customer, when checking the result of the analysis, notices any incorrectness or incompleteness, he shall immediately inform our project manager or Technical Support thereof in writing. If the Customer fails to immediately report such a case to our project manager or Technical Support, any liability on our



part shall be excluded. It shall be the Customer's responsibility to prove that it was impossible to notice the incorrectness or incompleteness at that time.

4.18 We assume no liability, in any case whatsoever, for any steps, such as formwork, formwork removal, post-processing or changes in the composition of the concrete, that the Customer takes based on the interpretation of our result of the analysis and based on any further features in the Web Portal/App.

4.19 If the Customer suffers monetary damage due to an incorrect result of the analysis, we shall be liable only if it can be proven that we or our vicarious agent or the concrete laboratory technician caused such damage with intent. Any liability for including but not limited to lost profit, consequential damages or lost data shall be excluded. It shall be the Customer's responsibility to prove who was at fault. Other than that, the relevant statutory provisions shall apply.

4.20 Any liability on our part shall be limited by the amount invoiced and actually paid for the relevant contract.

4.21 To the extent that the Product Liability Act (*Produkthaftungsgesetz*) applies, any liability on our part for damage to objects incurred by an entrepreneur shall be excluded.

4.22 Any and all claims for damages against us shall expire by limitation within 6 months after the damage and the party causing the damage become known, at the latest however two years after the end of the contract term.

4.23 Notwithstanding Clause 4.27, any data and analysis results collected in performing the contract specific to a certain Customer are stored electronically by our vicarious agent for backup reasons. We undertake to treat such data strictly confidentially and to not pass them on to a third party. However, we are entitled to use the collected data to defend ourselves against and assert claims.

4.24 Our liability exclusively covers statements made or information provided by our project manager or Technical Support.

4.25 We do not advise on concrete technology. We give no instructions regarding the composition of concrete or the casting of concrete. To the extent that we or Technical Support make any recommendations in this connection, these recommendations shall not be binding. We assume no liability for such recommendations.

4.26 Any warranty claims of the Customer shall be excluded, if not notified to us without undue delay.

4.27 Any data and analysis results collected, as well as any other information collected, used, maintained, transmitted or otherwise processed via the Web Portal, the App and/or as a part of any other service provided, but except for personal data, become our sole property and we reserve any rights therein. We are free to use, combine, modify and treat such information in any other way for any commercial or non-commercial purposes. To this end, and as far as the Customer holds any rights in such data provided, we are granted a world-wide, non-exclusive, royalty-free, perpetual and unrestricted license to use such information.

## **5. Payment conditions, prohibition to offset and assign claims**

5.1 In the event of rental, we charge our Customers for services rendered by way of a monthly invoice. Our invoices are payable within 14 days from receipt of the invoice without any deductions. The invoices may be issued electronically at our sole discretion. In the event of sale of our CONCREMOTE system, Calibration Services, Accessories or On-site Training we charge our Customers by way of a single invoice. For additional services rendered we charge by way of a periodically invoice.

---

5.2 Payments for invoices shall be made in a timely manner so that the amount invoiced is at our disposal on the due date. This is the case when the amount was credited to our account on or before the due date. When making bank transfers, the Customer shall be the one to bear the risk of loss or delay, irrespective of in whose sphere the relevant loss or delay occurs.

5.3 Any and all costs and expenses, in particular discount charges and currency exchange fees, shall be borne by the Customer.

5.4 Payments may be made with debt-discharging effect only to the bank account stated by us in the relevant invoice.

5.5 If invoices we issued are not paid in due time, we shall be entitled to receive interest in the statutory amount starting from the day the invoice becomes due. Irrespective of fault, the Customer shall be obliged, for each case of default, to reimburse us for all dunning, collection, investigation and information costs and legal fees incurred in connection with the collection of unpaid amounts invoiced. We reserve the right to assert damages exceeding such amounts and to discontinue any services rendered.

5.6 If the Customer, despite a written reminder and despite having been granted a grace period of seven days, still has not paid the outstanding amount invoiced, we are entitled to immediately withdraw from the relevant contract without having to set any further grace period. If we withdraw from the relevant contract, the Customer shall reimburse us for any and all expenses incurred up to that point, including reasonable lawyers' fees, irrespective of whether they have been invoiced or not.

5.7 In case we granted rebates or discounts, these shall be subject to the condition precedent of timely and complete payment of the relevant invoice issued by us.

5.8 Any payments allocated by the Customer for specific purposes will be used for paying first cost, if any, then interest and then the Customer's debt that has been outstanding the longest, unless we expressly agree to the allocation made by the Customer.

5.9 Any offsetting with our claims by the contractual partner shall be excluded, unless the Customer holds an enforceable title with final legal effect documenting the Customer's claims or unless we agree to the intended offsetting in writing.

5.10 Any claims that the Customer may have against us, may only be assigned to third parties upon our prior written consent.

## **6. Contract period and rights to withdraw**

6.1 The contractual relationship shall come into existence when our offer is accepted in writing and shall end after the agreed time period or on the day when the devices and calibration boxes are duly returned, without the need for any further explanation.

6.2 We are entitled to terminate the relevant contract at the last day of each month subject to a notice period of 14 days without giving reasons.

6.3 To the extent that an unlimited contract period has been agreed, the Customer is entitled to terminate the relevant contract at the last day of each month subject to a notice period of 14 days without giving reasons. If a limited contract period has been agreed, the Customer is entitled to terminate the relevant contract at the last day of each month subject to a notice period of 14 days only for good cause.



## **7. Choice of law and exclusive jurisdiction**

7.1 The contractual relationship between us and the Customer as well as any and all legal relationships in connection with this contractual relationship shall exclusively be subject to Austrian law excluding its conflict-of-law rules and the CISG.

7.2 The court with exclusive jurisdiction for any and all legal disputes arising out of or in connection with this contractual relationship shall be the Vienna Commercial Court (*Handelsgericht Wien*). We remain free to assert claims against the Customer at any other court competent or at any Arbitral Centre.

## **8. Data protection**

Doka processes the personal data that the customer provides to Doka via the web service portal/app or when using the service on behalf of the customer. The customer is responsible within the meaning of the DSGVO and undertakes to comply with the provisions applicable to him.

Customer warrants to bring Doka's Privacy Statement available at <http://www.doka.com/concremote> to the attention of all natural persons it grants access rights to the Web Portal and/or App, or who's personal data may otherwise be transferred to Doka, and shall indemnify and hold harmless Doka for any failure to comply with this obligation.