

## **ALTRAD RMD KWIKFORM CONDITIONS OF TRADING**

### **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO CLAUSE 33**

#### **DEFINITIONS**

"Agreement" means the contract between ARMDK and the Customer for the supply of Equipment and/or Services in accordance with these Conditions.

"Conditions" means the terms and conditions set out in this document and any special terms agreed in writing between ARMDK and the Customer.

"ARMDK" means Altrad RMD Kwikform, the trading name of RMD Kwikform Limited (registered no. 00301199) whose registered office is at Brickyard Road, Aldridge, Walsall, West Midlands WS9 8BW.

"Customer" means the company or individual: (i) hiring or purchasing the Equipment; and/or (ii) procuring any Services from ARMDK.

"Customer Requirements" means those requirements set out in the technical proposal forming part of the Quotation, and if the Agreement includes Services shall include the design brief provided by the Customer which sets out the details of the required Services to be provided under the Agreement.

"Drawings" means any drawings, designs, technical proposals, recommendations or instructions prepared by ARMDK as part of the Services.

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

"Price" means: (i) the purchase price in the case of all Equipment for purchase and the rate of hire in the case of all Equipment for hire multiplied by the number or days for which the Equipment is hired, both as stated in the Quotation or as otherwise agreed between the Customer and ARMDK from time to time; and/or (ii) in the case of Services, the amount to be paid to ARMDK for the provision of the Services.

"Quotation" means the quotation provided by ARMDK to the Customer.

"Rental" means the portion of the Price to be paid in respect of each month that the equipment is on hire in accordance with condition 6 and condition 34.

"Services" means any design, inspection or other services to be provided to the Customer by ARMDK.

1. Headings will not affect the construction of these Conditions.

2. These Conditions apply to the hire and the sale of

Equipment and the supply of Services save where specifically stated otherwise.

#### **Conditions of Trading**

3. The following Conditions comprise all the terms of contract between ARMDK and the Customer to the exclusion of all other terms and conditions, including without limitation any of those which the Customer may purport to apply under any hire order, confirmation of hire purchase order confirmation of order or other similar document. No conduct of ARMDK shall constitute acceptance of any terms put forward by the Customer, and no addition to or variation of these Conditions shall be binding on ARMDK unless agreed to and signed in writing by a director of ARMDK. A verbal emailed instruction by the Customer to deliver Equipment noted in the Quotation will constitute acceptance of the Quotation and these Conditions.

4. Any quotation given by ARMDK is valid for 14 days from its date provided ARMDK has not subsequently withdrawn it.

5. ARMDK hereby hires and/or sells to the Customer the Equipment at the Price upon the terms and subject to the Conditions hereinafter appearing and agrees to perform the Services with reasonable skill and care.

6. In respect or any hiring of the Equipment, hiring will commence on the date on which the Equipment leaves ARMDK's premises for delivery to the Customer's site or delivery address named in the Quotation or the date the Equipment is made available for collection by ARMDK or its agents, and shall continue until the Equipment is returned or should have been returned (whichever is longer) to ARMDK in accordance with these Conditions. The Customer must hire the Equipment for a minimum period of four weeks.

#### **DRAWINGS**

7. Any Drawings are prepared for the exclusive use of and from information supplied by the Customer and as such the Customer shall ensure that all aspects of the Drawings (including, but not limited to, the design, dimensions, heights, spans, applied loads and material schedules) are in accordance with the Customer's Requirements.

8. Any Drawings provided as part of the Services relate only to the Agreement for which they have been prepared and shall not be applicable to any other site or equipment.

9. The copyright and all other Intellectual property rights in any Drawings provided as part of the Services shall remain the sole and exclusive property of ARMDK. The Customer shall not distribute, resell, sell, licence or sub-licence the Drawings to any third party. No alterations shall be made to the Drawings without the prior written approval of ARMDK.

10. ARMDK shall not be liable for any loss, costs, damages or expenses Incurred by the Customer if the Drawings are modified, altered or adapted without ARMDK's approval in accordance with clause 9.

11. The Customer accepts responsibility for ensuring the

following:

- (a) that any Drawings comply with the Customer Requirements;
- (b) that any ARMDK equipment or other load bearing items depicted on the Drawings are adequately supported and braced and made safe during all stages of use on site;
- (c) the selection and design of any working platforms or means or access/egress necessary to provide a safe work area and ensuring that they comply with any applicable statutory Regulations (whether indicated on the Drawings or not);
- (d) that the design pressure or any other design load or force on ARMDK equipment is not exceeded if one or more of the Customer Requirements change;
- (e) that any non ARMDK equipment shown on the Drawings can safely support and transmit all necessary loads without detriment to the design; and
- (f) the selection and control of safe methods of assembly, erection, use and dismantling.

12. The Customer shall be responsible for arranging and procuring any necessary Inspection and certification of any erected equipment on the site.

#### **PRE-ASSEMBLY**

13. This section relates to any pre-assembly of the Equipment or the Equipment components by ARMDK. The exact scope of work of pre-assembly services are as agreed in the Agreement.

14. The Customer shall be obliged to perform acceptance testing once the pre-assembled items have been delivered to site. Such acceptance testing shall be independent of any technical acceptance testing or acceptance testing by public authorities carried out by the Customer with third parties. If acceptance is delayed due to reasons within the Customer's sphere of influence, acceptance testing shall be deemed completed two weeks after the Customer was informed of the completion of the pre-assembly.

15. It is the Customer's responsibility, at their costs, to ensure that any pre-assembled objects are installed or erected on site using a safe method of construction with appropriate edge protection and safety equipment supplied by the customer unless specified in the Agreement.

#### **INSPECTION**

16. Any request by the Customer for ARMDK to carry out an inspection of the Equipment at the Customer's site shall be made in writing and shall consist of 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 ("Inspection"). Such Inspection shall in all cases be subject to ARMDK's "Condition of Site Inspection" terms.

#### **SITE ASSISTANCE/DEMONSTRATION**

17. Any request by the Customer for ARMDK to carry out Site Assistance or Demonstrations at the Customer's site shall be made in writing. It will consist of guidance given on site by trained ARMDK personnel on the appreciation and safe use of ARMDK products only. Such Site Assistance or Demonstrations shall in all cases be subject to ARMDK's "Condition of Site Assistance/Demonstrations" terms.

#### **EQUIPMENT DELIVERY AND RISK**

18. When the Equipment is ready for delivery ARMDK will give the Customer notice of readiness for collection. The Customer shall then give ARMDK 10 days written notice that either:

- (a) it intends to collect the Equipment and the Customer shall then collect the same on a date notified to ARMDK, which date shall be within 10 days of such notice,
- (b) if previously agreed in writing that ARMDK shall provide transport, a request that such transport be provided at the Customer's sole expense following which ARMDK and the Customer will then agree a date for delivery PROVIDED THAT time for delivery of Equipment by ARMDK shall not be made or essence.

19. If the Customer fails to collect the Equipment within 10 days of the Customer's notice given under clause 18 and they have not agreed with ARMDK that ARMDK will deliver the Equipment in accordance with Clause 18(b), then ARMDK may treat the Customer's failure as a repudiation of the contract with immediate effect in which case ARMDK may:

- i. recover from the Customer all losses caused by the Customer's breach;
- ii. retain any payments made by the Customer before termination of this Agreement;
- iii. recover from the Customer the cost of hiring the Equipment for the minimum four week period referred to in Clause 6 above; and
- iv. hire or sell the Equipment to somebody else.

20. ARMDK will endeavour to have the Equipment ready for delivery by the date agreed for delivery or collection in accordance with Clause 18 but shall not incur any liability whatsoever nor shall the Customer be entitled to terminate this Agreement, by reason of ARMDK's failure to deliver or have available for collection by the agreed date.

21. In the event that ARMDK agrees to deliver the Equipment, it shall deliver such Equipment to the Customer's site or address named in the Quotation. ARMDK shall arrange carriage of such Equipment to such site or address and the costs of and associated with such carriage, as specified by ARMDK to the Customer, shall be reimbursed to ARMDK forthwith by the Customer.

22. The risk in all Equipment delivered by ARMDK in accordance with Clause 21 shall pass to the Customer as soon as the Equipment leaves ARMDK's premises. The risk in all equipment collected by the Customer from ARMDK's premises will pass to the Customer immediately on

collection.

23. ARMDK may deliver the Equipment by instalments of any size and any order. Each separate instalment shall be invoiced and/or paid for in accordance with this Agreement.

24. ARMDK will prepare an Equipment delivery note for each delivery or collection of Equipment describing the Equipment forming part of that delivery or collection. At the time of such delivery or collection, a copy of the delivery note will be given to the Customer and shall constitute proof of delivery or collection of the Equipment.

25. The quantity of any consignment of Equipment as recorded by ARMDK upon dispatch from ARMDK's place of business shall be conclusive evidence or the quantity received by the Customer on delivery unless the Customer produces conclusive evidence proving the contrary within 24 hours of the Equipment being delivered.

26. The Customer is responsible for the unloading of all Equipment at the Customer's site or address named in the Quotation, and shall supply suitably qualified labour and plant to facilitate the same. ARMDK's employees and those of any transport company it employs are not responsible for the unloading of any Equipment at the Customer's site or address named in the Quotation and will not assist in same.

27. If ARMDK delivers to the Customer a quantity of Equipment of up to 5%, more or less than the quantity set out 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 shall pay for the Equipment at the pro rata Price.

28. Without prejudice to clause 27 above, ARMDK shall have no liability to the Customer in respect of any shortfall in Equipment delivered or collected unless the Customer gives ARMDK notice of the shortfall within 3 days of delivery or collection. If the Customer does give such notice then ARMDK may at its sole discretion either:

- i. make good the shortfall by one or more further deliveries; or
- ii. reduce the Price by the same proportion as the shortage bears to the contract quantity,

29. The Customer shall not be entitled to reject any delivery on the grounds of any excess or short delivery but shall pay the Price or where ARMDK exercises the option in clause 28 (ii) above, the reduced Price in accordance with that provision.

30. If the Customer rejects the Equipment upon delivery or collection of the same for any reason other than the circumstances described in Clause 27, the Customer shall notify ARMDK forthwith. ARMDK will then examine the Equipment and if any are found not to conform with the Customer's Requirements ARMDK may:

- a. at its own expense replace the Equipment found not to be in accordance with the Customer's Requirements; or
- b. reduce the Price by an amount equivalent to that proportion or the Price payable in respect of the Equipment found not to conform to the Customer's

Requirements.

31. The Customer shall in any case accept and pay the Price for all Equipment which conforms to the Customer's Requirements.

#### **ARMDK's LIABILITY**

32. ARMDK shall exercise reasonable skill and care to ensure that the Equipment and any drawings, designs, measurements or specifications provided by ARMDK satisfies the Customer's Requirements subject to the following:

- a. ARMDK shall have no liability for any alleged failure of the Equipment, Services, Drawings, designs, measurements or specifications provided by ARMDK 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 ARMDK as the basis for providing the Equipment or the Services or the technical proposal forming part of the Quotation.
- b. ARMDK shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow ARMDK's instructions (whether oral or in writing), misuse or alteration of repair of the Equipment without ARMDK's approval.
- c. ARMDK shall have no liability in relation to parts, materials or equipment not supplied by ARMDK.
- d. ARMDK shall have no liability for any alleged failure of the Equipment or any Drawings, designs, measurements or specifications supplied by ARMDK to satisfy the Customer's Requirements if such failure is not notified by the Customer to ARMDK forthwith and no later than 2 days from the date of such failure.
- e. Where any Drawing is supplied bearing the words "NOT CHECKED FOR ERECTION" ARMDK shall not be liable to the Customer for any loss of whatever nature (whether or not such loss or damage was foreseen, direct, foreseeable, known or otherwise) howsoever caused or any such losses arising as a result of any third party bringing a claim in respect of any nature whatsoever arising out of the use of such Drawing by the Customer,
- f. ARMDK shall have no liability if the Equipment is not fit for purpose and all other conditions, warranties, stipulations and undertakings, whether express or implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded.
- g. ARMDK shall have no liability if the Customer breaches clause 48 or any part thereof.
- h. ARMDK's liability to the Customer pursuant to these Conditions shall be limited to that proportion of the Customer's losses which it would be just and equitable to require ARMDK

to pay having regard to the extent of ARMDK's liability for the same.

33. Without prejudice to clause 32 above, ARMDK's maximum overall liability under or in connection with this Agreement shall be limited to a maximum of 10% of the value of the Price.

#### **PAYMENT**

34. In the case of Equipment for hire, ARMDK will issue an invoice to the Customer for the Rental 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 ARMDK in accordance with these Conditions. Payment is due 30 days from the date of the invoice. Time shall be of the essence in respect of the payment of all sums due hereunder.

35. In the case of Equipment for purchase or the supply of Services, where the Customer has no agreed credit facility with ARMDK at the time of delivery of the Equipment or provision of Services, the Price of such Equipment or Services together with any other amounts due under this Agreement shall be invoiced and payable prior to or immediately upon delivery or performance of the same. Payment may be made by credit card, debit card or cheque (allow 5 days for cheque clearance).

36. In the case of Equipment for purchase or the supply of Services, where the Customer has an agreed credit facility with ARMDK at the time of delivery of the Equipment, ARMDK may invoice the Customer for the Price of such Equipment or Services together with any other amounts due to ARMDK under this Agreement at any time after delivery or performance of the Services and the Customer shall pay the Price within 30 days of such invoice.

37. ARMDK may at any time stating their reasons withdraw with immediate effect the Customer's credit facility.

38. All payments due hereunder (if not made by direct debit or banker's order) shall be made to ARMDK without any deduction or set-off for any alleged short- fall in delivery defect in quality or failure to conform to the Customer's Requirements or other breach of contract. Payments shall be made at the Company's address stipulated in the Quotation or such other address as ARMDK may from time to time communicate to the Customer. Time shall be of the essence in respect of the payment of all sums due hereunder. Any payments sent by post shall be so sent at the risk of the Customer.

39. The Customer expressly acknowledges and accepts that ARMDK shall be entitled to revise the Rental (by such amount as ARMDK shall in its absolute discretion determine) in the event that costs of materials, labour or transport increase. Any such revision shall be notified by ARMDK to the Customer not less than 2 weeks before the date the revised Rental takes effect.

40. The Customer shall pay interest on all Rental and/or other amounts due in accordance with these

Conditions which are paid late at the rate of 4% per annum above the base lending rate of HSBC Bank plc in force from time to time and all additional administrative costs incurred by ARMDK in recovering any late payment, all such amounts being calculated from the due date for payment, of such Price until actual payment of the same.

41. The Price and any other amounts due in accordance with these Conditions is exclusive of VAT, which shall be due at the rate prevailing on the date of the VAT invoice, and any other tax or levy which ARMDK is or shall become liable to pay or collect.

42. In the event or any breach by the Customer of any term, warranty or condition of these Conditions the Customer shall if required by ARMDK pay any invoice rendered to the Customer immediately.

43. ARMDK may appropriate any payment made by the Customer to such Equipment (including Equipment supplied under any other contract with ARMDK) as ARMDK may in its sole discretion think fit.

#### **PROPERTY**

44. In respect of Equipment for hire the Equipment shall at all times remain the property of ARMDK and the Customer shall have no rights to the Equipment other than as hirer and the Customer shall not do or permit or cause to be done any matter or thing whereby the rights of ARMDK in respect of the Equipment are or may be prejudicially affected.

45. In respect of Equipment for sale, property in such Equipment shall not pass to the Customer until payment of the Price in full in accordance with these Conditions has been received by ARMDK.

46. Until property in the Equipment for sale passes to the Customer in accordance with these Conditions, the Customer shall hold them as Bailee for ARMDK and shall store them separately from any similar equipment of ARMDK or any other person in such a way that they remain identifiable as ARMDK 's property.

47. The specification(s) drawings(s) and design(s) relating to the Equipment (including the copyright, design right or other intellectual property in them) shall as between the Parties be the property of ARMDK. Where any designs, drawings or specifications have been supplied by the Customer then the Customer warrants that the use of those designs, drawings or specifications shall not infringe the rights of any third party.

48. The Customer must not use the Equipment for any purpose for which they are not expressly designed. The Customer hereby agrees that it will not:

- a. without the prior written consent of ARMDK effect any modification or make any alterations or additions to the Equipment; or
- b. remove or interfere with any identification marks or plates affixed to the Equipment and not attempt or purport to do so nor permit the same.

#### **INSURANCE**

49. In the case of Equipment for hire the Customer will throughout the period of this Agreement, without prejudice to the liability of the Customer to ARMDK, keep the Equipment insured with an insurance company of good repute against loss or damage from all risks (including third party risks) for the full replacement value of that Equipment. The Customer shall notify its insurers that the Equipment is on hire from ARMDK and request the insurers to endorse a note of such interest on the policy of insurance naming ARMDK as loss payee.

50. The Customer shall on demand show ARMDK 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 this policy. 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, ARMDK may pay such premium or premiums and recoup the cost of doing so from the Customer.

51. The Customer shall immediately notify ARMDK in the event that an event occurs which is a risk covered by the Customer's insurance which the Customer is obliged to take out under this Agreement. The Customer shall indemnify ARMDK against all loss or damage to the Equipment not recovered under the policy of insurance.

#### **TERMINATION**

52. If:

- a. the Customer (being an individual) dies or suffers an interim order (within the meaning of the Insolvency Act 1986) to be made against them or enters into a voluntary arrangement or suffers the making of a statutory demand or the presentation of a petition for a bankruptcy order or make any arrangement or composition with his creditors; or
- b. the Customer (being a limited company) enters into compulsory liquidation or voluntary liquidation (not being voluntary liquidation for the purpose of reconstruction or amalgamation only the terms of which have previously been approved by ARMDK in writing); or
- c. the Customer has a receiver or receiver and manager appointed to any part of its assets or suffers the appointment or the presentation of a petition for the appointment or an administrator under the provisions of Part II of the Insolvency Act 1986; or
- d. any distress, execution or other legal process shall be levied on or against the Equipment or any part thereof or against any Premises where the same may be;

then any hire constituted by this Agreement or any Contract in place shall terminate without notice and no payment subsequently accepted by ARMDK without knowledge of such termination shall in any way prejudice or affect the operation of this clause.

53. If and on each and every occasion on which:

- a. the Customer shall fail to pay any Price or other

sums payable under this Agreement or any Contract in full within 7 days after the same shall have become due; or

- b. the Customer shall commit a breach of any of the other terms of this Agreement and (if capable of being remedied) shall fail to remedy the breach within 14 days after notice in writing from ARMDK requiring the same; or
- c. the Customer breaches any applicable law which may have an adverse impact on ARMDK, including but not limited to the Modern Slavery Act 2015, the Bribery Act 2010, the Equality Act 2010 or any applicable law relating to the sanctioning of any country, company or individual;
- d. the Customer shall do or cause to be done anything whereby ARMDK's rights in the Equipment are prejudiced or put in jeopardy; or
- e. if ARMDK so decides for any other reasonable cause;

then ARMDK shall have the right to terminate this Agreement and any contract forthwith and for all purposes.

54. At the end of the hire of any Equipment or on earlier repudiation or termination in accordance with this Agreement:

- a. all Equipment must be returned to ARMDK forthwith at its premises where the Equipment was originally supplied (unless otherwise specified by ARMDK) in good repair and in a clean and sound condition (fair wear and tear only excepted) and the Customer shall ensure the safe-keeping supervision and custody of the Equipment until it is returned or repossessed by ARMDK. The Customer shall be responsible for the loading of all Equipment being returned in accordance with all relevant health and safety legislation and guidance and ARMDK guidance. In the event ARMDK does not in its opinion believe that the Equipment has been safely loaded ARMDK has the right to send the same back to the Customer for safe loading in which case the period of hire will continue until the Equipment has been returned to ARMDK in what ARMDK in its sole discretion considers is a safe condition. The assessment of the condition of Equipment shall be made solely by ARMDK acting reasonably whose assessment shall be binding on the Customer.
- b. the Customer shall fully reimburse ARMDK for all charges and costs incurred by it for cleaning or repairing damaged or defective Equipment as 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 ARMDK, based on ARMDK's price list current at the date of the repudiation or termination as appropriate.

In the event that the Customer fails to return the Equipment within 14 days of being obliged to, ARMDK 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. In the event that the Equipment is situated on premises which are occupied or controlled by a third party, the Customer shall ensure that it has made sufficient arrangements with the third party to enable ARMDK to enter on to such premises in order to exercise its right under this clause to retake possession of the Equipment. Without prejudice to ARMDK's rights to claim damages the Customer shall on termination or repudiation of that Agreement become immediately liable to pay to ARMDK all arrears of Rental, any other amounts due in accordance with these Conditions and any other amounts due and payable and any costs and expenses incurred by ARMDK in locating repossessing and recovering or restoring the Equipment or collecting payments due under this Agreement.

55. The Customer shall not be entitled to claim for loss of profit or breach of contract in respect of any termination of these Conditions.

#### **SUBCONTRACTING AND ASSIGNMENT**

56. ARMDK, but not the Customer, may assign sub-contract or sub-let these Conditions or the Equipment or any part thereof and the Customer shall ensure that all Equipment hired from ARMDK remains on the agreed site until returned to ARMDK unless otherwise expressly agreed by ARMDK.

#### **MISCELLANEOUS**

57. ARMDK has designed, manufactured or procured the manufacture of and supplied the Equipment for and to the Customer on the basis of the written undertaking herein that the Customer will ensure that the Equipment will be safe and without health risks when being set, used, cleaned or maintained by the Customer, its employees and/or any third party and on the basis that ARMDK is relieved of its duty under section 6(1)(a) or the Health and Safety at Work etc, Act 1974, as is reasonable.

58. ARMDK will not be liable to the Customer in any civil proceedings brought by the Customer against ARMDK under any health and safety legislation and regulations where such exclusion of liability is permitted by law

59. The Customer shall indemnify and keep indemnified ARMDK in respect of any liability, in respect of or in connection with the Equipment incurred directly by ARMDK under the Health and Safety at Work etc Act 1974 or any Regulation, Order or directions made thereunder.

60. The rights and remedies of ARMDK shall not be diminished, waived or extinguished by the granting of any indulgence or forbearance or extension of time by ARMDK or by any failure or delay by ARMDK in asserting or exercising any such rights or remedies.

61. If any provision in this Agreement 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 this Agreement but the legality validity and enforceability of the remainder of such Agreement shall not be affected.

62. Nothing in this Agreement shall confer or purport to confer on any third party any benefit or right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

63. This Agreement shall be governed and construed in all respects in accordance with the laws of England and ARMDK and Customer irrevocably submit to the exclusive jurisdiction of the English Courts.

64. Unless otherwise agreed by ARMDK in writing, scheme designs provided by ARMDK pursuant to this agreement remain valid only for use with genuine ARMDK equipment, which has been supplied by ARMDK and maintained in accordance with ARMDK's recommendations. ARMDK shall have no liability in contract, tort (including negligence), breach of statutory duty, or otherwise arising out of or in connection with:

- a. the use of ARMDK products supplied by others or not maintained in accordance with ARMDK recommendations.
- b. the mixing of ARMDK equipment with other products from different suppliers; or
- c. the substitution of genuine ARMDK equipment with copy or counterfeit products.