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Poznań, March 16, 2020

## MEMORANDUM

**To: OLAN sp. z o.o. with its registered office in Żabokliki, Poland ("OLAN")**

**From: Maciej Górny, partner & attorney-at-law in Koczan Górny Attorneys-at-Law**

**Date: March 16, 2020**

**Subject: Marketing of OLAN's scaffoldings in Norway**

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### I. OLAN SCAFFOLDINGS

OLAN is the owner and the manufacturer of several scaffolding systems, such as frame scaffolding EURO+, modular scaffolding R+ and modular scaffolding STEELFOX. Each of the aforesaid systems has been tested by Institute of Mechanised Construction and Rock Mining in Warsaw, Poland – an EU notified testing laboratory and certification body accredited by the Polish Center for Accreditation (accreditations nos. AB 049, AB 236, AB 008, AB 1344, AC 002, AC 065 and AC 092). The following certificates of compliance have been issued:

- 1) with respect to modular scaffolds R+ certificate of compliance with PN-EN 12810-1 (excluding items 7.2, 8.4, 8.5), PN-EN 12810-2 (excluding item 4.4) and PN-EN 12811-1 (excluding items 4.1, 4.2.2.2, 4.2.2.3, 5.5.5, 5.7.2, 5.8.2, 6.2.2.6, 6.2.6 and 6.3.3) requirements;
- 2) with respect to frame scaffolds EURO+ certificate of compliance with PN-EN12810-1 (excluding items 7.2, 8.4, 8.5, 8.6), PN-EN 12810-2 (excluding item 4.4) and PN-EN 12811-1 (excluding items 4.1, 4.2.2.2, 4.2.2.3, 5.5.5, 5.7.2, 5.8.2, 6.2.2.6, 6.2.6 and 6.3.3) requirements;
- 3) with respect to modular scaffolds STEELFOX certificate of compliance with PN-EN12810-1 (excluding items 7.2, 8.4, 8.5), PN-EN 12810-2 (excluding item 4.4) and PN-EN 12811-1 (excluding items 4.1, 4.2.2.2, 4.2.2.3, 5.5.5, 5.7.2, 5.8.2, 6.2.2.6, 6.2.6 and 6.3.3) requirements.

OLAN's scaffolding systems R+, EURO+ and STEELFOX have been also granted "B" Safety Certificates and have been affixed with safety mark "B", placed on the market and used in Poland as a safe product. Given scaffoldings have been lawfully marketed in Poland.

Each sale of OLAN's scaffoldings is accompanied by installation instructions and instructions for use, drafted in relevant language of the destination market, *inter alia* Norwegian.

## II. EU & EEA REGULATIONS

Until April 19, 2020 the movement of goods such as scaffoldings within European Union and European Economic Area territory is governed by the Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State. Second applicable law to marketing scaffoldings is set out in Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products.

The principle of mutual recognition, which derives from the case-law of the Court of Justice of the European Communities, is one of the means of ensuring the free movement of goods within the internal market. Mutual recognition applies to products which are not subject to Community harmonisation legislation, or to aspects of products falling outside the scope of such legislation. According to that principle, a Member State may not prohibit the sale on its territory of products which are lawfully marketed in another Member State, even where those products were manufactured in accordance with technical rules different from those to which domestic products are subject (recital 3 of the Regulation 764/2008).

While applying the procedure laid down in the Regulation 764/2008, the competent authority of a Member State should not withdraw or restrict the placing on its market of a product or type of product lawfully marketed in another Member State (recital 24 of the Regulation 764/2008).

Member States shall not refuse certificates or test reports issued by a conformity-assessment body accredited for the appropriate field of conformity-assessment activity in accordance with Regulation (EC) No 765/2008 on grounds related to the competence of that body (Article 5 of the Regulation 764/2008).

While Norway is not a member state of EU, however it is a member state of EEA, to which the above regulations apply.

## III. NORWEGIAN REGULATIONS

Within the Norway territory with respect to scaffolds the Regulations concerning the construction, design and production of work equipment and chemicals (the Producer Responsibility Regulations; "PRR"), adopted by the Ministry of Labour (now the Ministry of Labour and Social Affairs) apply. This memorandum is based on the translation of the above regulations provided by the Norwegian Labour Inspection Authority (Arbeidstilsynet).

The PRR apply to anyone who designs, produces, imports, markets, sells, rents out, lends out or puts into production products covered by the regulations (Section 1-3). Chapter 4 of the PRR applies to scaffolds, ladders and structures on roofs and facades (Section 1-2).

Scaffolds, ladders and temporary equipment for access to and work on roofs and facades with pertaining components shall meet the technical requirements in the relevant NS-EN standards or have corresponding safety level (Section 4-1).

The Labour Inspection Authority commentary to this Sections indicates that Chapter 4 refers to facade scaffolding, hanging scaffolding, extruded scaffolding, components for façade scaffolds, hanging

scaffolds and protruding scaffolds, scaffold towers, ladders and work arches, products for temporary mounting on roofs and facades for access to perform work and safety nets.

The regulations do not set specific requirements for how the products should be designed to achieve satisfactory stability, strength and protection effect. A number of NS-EN standards have been developed in this area. **Standards are optional, but if the requirements of the standards are met, this is considered pre-accepted solutions in accordance with the requirements of the regulations.** If the product in question is not manufactured in accordance with the relevant standard, it must be documented, by means of calculations and tests, that the product has a corresponding level of safety.

The following standards are relevant when trading on the Norwegian market:

NS-EN 12810-1	Facade scaffolds of prefabricated elements Part 1: Product specification
NS-EN 12810-2	Facade scaffolds of prefabricated elements Part 2: Special design methods
NS-EN 12811-1	Equipment for temporary work - part 1: Scaffolding, performance requirements and general design rules

**It shall be stated that NS-EN standards have been developed in Europe and then adopted as the Norwegian Standard. There is no essential difference, except for language, between Norwegian and Polish standard (PN-EN), as they are both based on European Standards.**

Scaffolding shall be classified in the following six classes set out in Section 4-2.

Work equipment certified pursuant to Section 4-5 shall be durably and clearly marked with the name of the issuer of the certificate, certificate number, name of the manufacturer or registered trademark and production year (Section 4-3).

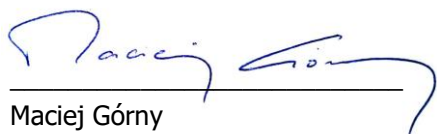
Manufacturers or vendors of work equipment pursuant to Section 4-1 shall provide installation instructions and instructions for use. The instructions must be in Norwegian and contain information about load class, foundations, assembly and erection, use, inspection, removal, maintenance, repair and scrapping criteria. Upon sale, the product shall be accompanied by installation instructions and instructions for use. The installation instructions must specify how the different components are to be assembled, reinforced and anchored. If a scaffold system can be installed in different ways to meet the requirements of different load classes, this must be clearly described in the installation instructions (Section 4-4).

Compliance with the requirements in Sections 4-1 to 4-4 shall be documented by a certificate issued by an EEA certification body accredited for this task. This does not apply if the product is sold in quantities below 10. The certificate shall be in Norwegian and contain information about the issuer of the certificate, certificate number, name of manufacturer, name of supplier, product name, product type, type of material in load-carrying components and confirmation that the requirements in Sections 4-1 to 4-4 have been met and that any relevant standards have been complied with. The certificate is valid for maximum 10 years. Upon sale, the product must be accompanied by the certificate. The Norwegian Labour Inspection Authority may request to see the certificate and test report (Section 4-5).

#### **IV. CONCLUSIONS**

1. OLAN scaffolding systems R+, EURO+ and STEELFOX have been lawfully marketed in Poland.

2. OLAN scaffolding systems meet the requirements set forth for scaffolds in European Standards EN 12810-1, EN 12810-2 and EN 12811-1, and thus OLAN scaffolding systems meet the requirements set forth in relevant Norwegian Standards.
3. The certificate of compliance with the given standards have been issued by an EEA certification body accredited for this task - Institute of Mechanised Construction and Rock Mining in Warsaw, Poland.
4. Upon sale, the products are accompanied by the relevant certificate, installation instructions and instructions for use in Norwegian.
5. As a result, OLAN scaffolding systems R+, EURO+ and STEELFOX meet the requirements of marketing its products in Norway. Given scaffolding systems may be placed on the Norwegian market for sale and use as products constructed, designed and produced in a way that ensures that employees are protected from harm to life or health in connection with their use.
6. Different interpretation of the indicated laws as well as any actual actions taken to restrain from marketing of OLAN scaffoldings in Norway shall be treated as restricting market access within the meaning of EU laws applicable to EEA member states.



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