



**KIMBERLEY ENGINEERING WORKS (PTY) LTD**

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**DATE: 01/07/07**

**STANDARD CONDITIONS OF SALE FOR FOUNDRY PRODUCTS**

**REF NO: SCS/F**

**1. DEFINITIONS**

Unless the context indicates otherwise the following words when used in the conditions set out hereunder shall have the meanings defined alongside them:

- (a) 'THE SELLER' shall mean Kimberley Engineering Works trading as KEW Foundries.
- (b) 'THE BUYER' shall mean the person or Company to whom the quotation is addressed or the order is received from.
- (c) 'GOODS' shall mean whatever is to be delivered by the Seller to the Buyer and shall include, where appropriate, any work to be performed in terms thereof.
- (d) 'ACCEPTANCE OF QUOTATION' shall mean the irrevocable and unconditional acceptance of this quotation and, even if the Buyer attaches conditions to his acceptance of this quotation, the unaltered terms hereof will apply unless the Seller has agreed in writing to accept the Buyer's conditions.

**2. VALIDITY**

Quotations will remain valid and open for acceptance for a period of 30 days from the date transmitted, unless otherwise agreed to in writing.

**3. PRICES**

Prices quoted, unless stated to the contrary, shall be cost, insurance and delivery to the Johannesburg area and exclusive of Value Added Tax.

**4. ORDER CANCELLATION / ALTERATION**

The Buyer may cancel or alter orders placed with the Seller, up to the point where no costs have been incurred by the Seller. This includes, but is not restricted to, the time when either the pattern making or moulding process has commenced.

**5. DELIVERY**

- (a) Times and Dates for delivery and/or performances are business estimates only and are given in good faith. They shall not be deemed to be contractual obligations or to be of the essence, and the Buyer shall not be entitled to terminate or repudiate the contract in the event of estimated delivery dates not being adhered to. No claim for any damages or loss shall lie against the Seller for any delay in delivery and/or performance, whichever applies.

## 6. TERMS OF PAYMENT

- (a) Unless otherwise stipulated in writing all accounts shall be paid in full within 30 days from date of Invoice. The Seller shall be entitled to charge interest on all overdue accounts calculated at the Rate of Prime as charged by the First National Bank of SA Ltd., from time to time, plus 2% thereon.
- (b) Notwithstanding the delivery of and passing of risk in the goods to the Buyer, ownership therein shall pass to the Buyer only when the full purchase price has been received by the Seller.
- (c) The Seller shall be entitled to suspend current and future performance during any period in which the Buyer is in default of payment in respect of goods already invoiced and delivered.

## 7. GUARANTEE

- (a) Should any goods sold, or work done, be evidenced to be defective within six months from the date of delivery, the Seller undertakes to repair or replace the goods. The Seller has sole discretion in the decision of which of the options to adopt. Should the Buyer himself or by means of his servants or agents attempt to repair or tamper with the goods, or should it appear that the defect was caused either wholly or in part by any abnormal or unreasonable use or was in fact not defective, the Seller shall not be obliged to repair or replace the goods or in any way reimburse the Buyer and the Buyer shall reimburse the Seller for all expenses incurred in sending workmen to inspect and/or replace the article.
- (b) Where the Buyer supplies his own pattern (s) it is the Buyer's responsibility to ensure that the patterns are in accordance with all drawings and specifications supplied and of a quality sufficient to endure the rigors of manufacture. The Buyer holds the Seller blameless for any damage caused to his pattern (s) during the process of manufacture, unless the damage is caused by the Sellers own negligence.
- (c) The Seller does not in any way warrant or represent that the goods sold or articles worked upon will be fit for any particular purpose save as may be expressly identified and/or stipulated. Where drawings and/or dimensions are furnished the Seller shall be entitled to deviate from them within the stipulated or normally accepted working tolerance.

## 8. PATTERN EQUIPMENT

The Buyer hereby acknowledges that the patterns are stored at the sole risk of the Buyer at the Seller's premises and hereby indemnifies and holds the Seller harmless against any claims arising from any act or omission on the part of the Seller or any officer, employee or representative of the Seller including claims arising from the loss or damage to the patterns stored by the Seller on behalf of the Buyer.

## 9. ACCEPTANCE OF QUOTATION

- (a) This is based upon the information and/or drawings and/or specifications set out and referred to herein and if such be contained in a separate documents, such document shall be deemed to be incorporated in and form part hereof. Acceptance of this quote must be accompanied by an official order containing sufficient information approved by the Seller in writing, to allow the Seller to commence work.
- (b) Acceptance of orders from first time Buyers will be subject to Credit Approval by Credit Guarantee unless otherwise agreed in writing between the Buyer and the Supplier.
- (c) All drawings, descriptive matter, ideas and information furnished by the Seller shall remain his property and shall be considered the Seller's business and trade secret given in trust and confidence and the Buyer shall not at any stage divulge any information so obtained from the Seller to any third party. The Seller reserves all his rights regarding any infringement in this regards.
- (d) This quotation is for the supply of the goods or performance of the work specified therein only and any additional goods or work required which is not specified in writing shall, if undertaken by the Seller, be charged as an extra to the quoted price. In like manner the Buyer shall pay any additional costs occasioned by any subsequent variation of this quote agreed to by the Seller at the request of the Buyer and/or resulting from the Buyer requiring work to be completed and the Seller agreeing to complete the work, in a shorter period than originally agreed.
- (e) The undertakings made by the Seller herein shall be the only undertakings binding upon the Seller who shall not be bound by any representation, warranties (expressed or implied in law) or undertakings made by any of its employees or agents save as are contained herein, and the contract resulting from acceptance of the quotation shall be deemed to be the sole and entire agreement between the two parties.
- (f) No alteration or addition to, or variation of the terms of the quotation or any information and/or drawings and/or specifications forming part thereof shall be binding unless the same be put in writing and be signed by both parties hereto.

## 10. INFRINGEMENT

Where the work is carried out in accordance with the Buyer's specification the Buyer holds the Seller indemnified against all damages, penalties, costs and expenses arising out of any infringement of copyright, patents, or registered designs, or any claim for such infringement or alleged infringement. The Seller shall be entitled to suspend the execution of this order once the third party has made it known that it claims an an infringement of any infringement of any copyrights, patent or registered design owned by it until such third party has agreed to withdraw its objections to the further performance of the order and/or until a Court of competent jurisdiction has finally decided on the validity of such third party's claim to infringement as aforesaid. The Seller shall not be obliged to take any steps whatsoever to obtain the withdrawal of any objection as aforesaid, or to conduct any litigation with regard thereto, or with regard to any aforesaid Court decision, all of which steps and/or litigation shall be conducted by the Buyer at its sole discretion and expense. Any expenses incurred up to the point of objection coming to the notice of the Seller in writing are for the Buyer's account.

**11. BUYER PROTECTION**

All drawings, pattern equipment, descriptive matter, ideas and information supplied by the Buyer shall remain his property and shall be considered the Buyer's business and any trade secrets given in trust and confidence and the Seller shall not at any stage divulge any information so obtained, or use the Buyer's property to or for any third party without the Buyer's written approval.

**12. CONSEQUENTIAL LOSS**

The Seller is not responsible for and the Buyer hereby indemnifies and holds the Seller harmless for any consequential losses or costs arising out of defective castings. The Buyer accepts that this indemnity is fair and reasonable.

**13. JURISDICTION**

Both parties agree to the jurisdiction of the competent Courts of the Republic of South Africa.

**14. RISKS**

The risk of damage to or destruction of goods passes to the Buyer on conclusion of the agreement of sale.

The Buyer agrees that if an account is not settled in full; (a) against order; or (b) within the period agreed upon, the Seller is (i) entitled to immediately institution action against the Buyer at the sole expense of the Buyer; or (ii) to cancel the agreement and take possession of any goods delivered to the Buyer and Claim damages.

In the event of cancellation, the Buyer shall be liable to pay (a) the difference between the selling price and the value of the goods at the time of repossession and (b) all other costs incurred in the repossession of the goods. The value of repossessed goods will be deemed to be the value placed on them by any sworn valuator after such repossession and such valuation will be conclusive proof of the value.

The Buyer irrevocably authorises the Seller to enter its premises to repossess any goods delivered and indemnifies the Seller completely against any damage whatsoever relating to the removal of repossessed goods.

All goods supplied by the Seller remain the property of the Seller until such goods have been fully paid for.