



**KIMBERLEY ENGINEERING WORKS (PTY) LTD**

Reg No. 1946/023622/07 Vat No. 4310114006

Private Bag X6062 Kimberley 8300 South Africa

170 Phakamile Mabija Rd, Kimberley, 8301, South Africa

Tel:+27 53 841 0474 Fax:+27 53 841 0473

e-mail: info@kewfoundries.co.za [www.kewfoundries.co.za](http://www.kewfoundries.co.za)



DATE:06-05-2021

**STANDARD CONDITIONS OF SALE FOR FOUNDRY PRODUCTS**

**REF NO: SCS/F REVISION A**

**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 CLIENT' shall mean the authorized representative of the 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 Client 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 Client attaches conditions to his acceptance of this quotation, the unaltered terms hereof will apply unless the Seller has agreed in writing to accept the Client'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.

Unless otherwise specified, for deliveries outside the Johannesburg Metropolitan Area, an additional road transport cost may be charged separately.

**4. ORDER CANCELLATION / ALTERATION**

The Client 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 Client 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. CONDITIONS OF CREDIT

- (a) A Credit Application is to be completed and submitted to the Seller complete with all supporting documentation, as required;
- (b) All Credit Applications in excess of R 15 000.00 per month, Credit Guarantee Insurance will be sought by the Seller;
- (c) Acceptance of orders from first time Client's will be subject to Credit Approval by Credit Guarantee unless otherwise agreed in writing between the Client and the Seller;
- (d) There is no Settlement Discount offered on any payments due. Settlement Discounts are only allowed at the Directors of the Seller's discretion only;
- (e) In the event of the Seller having recourse to the services of an Attorney in order to recover any amount due and owing by the Client to the Seller, the Client will be liable for all costs and charges incurred by the Seller on the Attorney and Client scale, including Collection Commission;
- (f) All payments made by the Client shall be appropriated firstly in settlement of legal costs due by the Client, if any, thereafter in respect of interest and lastly in reduction of Capital;
- (g) Any proceedings at Law which the Seller may desire to institute for the recovery on any sums or sums due by the Client to the Seller may at the option of the Seller be instituted in the Magistrate's Court of the District having jurisdiction in respect of the Client's person by virtue of Section 28 (1) of Act 32 of 1944, to the jurisdiction of which court the Seller hereby consents in terms of Section 45 of the aforesaid Act.

## 7. TERMS OF PAYMENT

- (a) Unless otherwise stipulated in writing all accounts shall be paid in full within 30 days from date of Statement. 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 2.5% thereon.
- (b) Notwithstanding the delivery of and passing of risk in the goods to the Client, ownership therein shall pass to the Client 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 Client is in default of payment in respect of goods already invoiced and delivered.

## 8. 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 Client 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 re-imburse the Client and the Client shall reimburse the Seller for all expenses incurred in sending workmen to inspect and/or replace the article.
- (b) Where the Client supplies his own pattern (s) it is the Client'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 Client holds the Seller blameless for any damage caused to his pattern (s) during the process of manufacture, unless the damage is caused by the Seller's 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 dimension are furnished the Seller shall be entitled to deviate from them within the stipulated or normally accepted working tolerance.

## 8. PATTERN EQUIPMENT

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

The Client also acknowledges that the replacement value of the pattern equipment is insured with the Client's Insurance Company or 3<sup>rd</sup> Party Underwriting Company.

## 9. ACCEPTANCE OF QUOTATION

- (h) 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 document, 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.

- (i) Acceptance of orders from first time Clients will be subject to Credit Approval by Credit Guarantee unless otherwise agreed in writing between the Client and the Seller.
- (j) Acceptance of the quotation by the Client will be placement of their order. An order acknowledgement will be sent by the Seller to the Client within 48 hours of receiving the order indicating the quantity, the price and indicative delivery date of that order.
- (k) 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 Client shall not at any stage divulge any information so obtained from the Client to any third party. The Client reserves all his rights regarding any infringement in this regards.
- (l) 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 Client, be charged as an extra to the quoted price. In like manner the Client shall pay any additional costs occasioned by any subsequent variation of this quote agreed to by the Client at the request of the Client and/or resulting from the Client requiring work to be completed and the Client agreeing to complete the work, in a shorter period than originally agreed.
- (m) The undertakings made by the Client herein shall be the only undertakings binding upon the Client 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.
- (n) 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 Client's specification the Client 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 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 Client 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 Client's account.

#### 11. CLIENT PROTECTION

All drawings, pattern equipment, descriptive matter, ideas and information supplied by the Client shall remain his property and shall be considered the Client'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 Client's property to or for any third party without the Client's written approval.

#### 12. CONSEQUENTIAL LOSS

The Seller is not responsible for and the Client hereby indemnifies and holds the Seller harmless for any consequential losses or costs arising out of defective castings. The Client 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 and reward of ownership of the goods will pass to the Client upon delivery of the goods to the Client's premises, unless alternative mode of delivery has been quoted, or alternative address as instructed by the Client.

In the event of cancellation, the Client 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 Client 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.

The risk of the goods delivered to the Client still remains the responsibility of the Client.

The Client agrees that if an account is not settled in full; (a) against issued invoices; or (b) within the period agreed upon, the Seller is (i) entitled to immediately institution

action against the Client at their own cost; (ii) to cancel the agreement and demand payment from the Client for goods delivered; (iii) to cease all work in progress at the time the agreement is cancelled, and demand payment for work in progress. Each party will be responsible for their own legal costs in any legal action taken, unless a judgement ruled within the Courts overrules this.