

**KEMACH EQUIPMENT (PTY) LTD  
STANDARD CONDITIONS OF SALE**

**Annexure 1**

**1. DELIVERY**

- 1.1 All orders received are subject to acceptance by the seller.
- 1.2 Upon delivery of goods the risk in the goods shall immediately pass to the purchaser
- 1.3 If the purchaser fails to take delivery of the goods when tendered, then the risk in the goods shall immediately pass to the purchaser who shall refund to the seller on demand the reasonable costs (including storage, transport and insurance) of moving the goods and keeping them during the period of the delay.
- 1.4 The off-loading of the goods at the delivery point is the responsibility of the purchaser and the seller's obligation does not extend beyond tendering the goods at the agreed delivery point or, in case of the C.1.1. orders, tendering the documents covering the shipment or consignment to the purchaser.
- 1.5 The seller's responsibility ceases when goods are placed f.o.r Railway station or any other place unnamed in this quotation, or on hired motor transport. Where, however, the destination is a Railway siding, or a Railway motor bus halt, the seller's responsibility ceases on delivery f.o.r. sender's station, notwithstanding the prepayment of transport charges. All demurrage charges will be for purchaser's account.

**2. RETURNS**

The seller shall not be obliged to accept the return of any goods sold by it, but if it agrees to do so the purchaser shall pay a handling charge to be determined by the seller but not exceeding ten per cent of the sales value of the goods plus transport costs.

**3. PAYMENTS**

- 3.1 If the purchaser has not been granted credit facilities, the terms of payment are cash against invoice.
- 3.2 If credit facilities have been granted payment must be made within 30 days from date of statement unless other terms have been agreed upon in writing, in which case they will apply.
- 3.3 All payments shall be made in Republic of South Africa currency, free of bank exchange and other charges, at the seller's sales office nearest to the point of delivery.
- 3.4 If delivery is made in installments, each installment will be invoiced and paid for separately.
- 3.5 If any amount is not paid upon due date, all amounts owed to the seller will at once become due, owing and payable any discount granted to the purchaser will be forfeited and the purchaser will pay interest on all overdue amounts at the prevailing overdraft rates as determined by Standard Bank of Southern Africa Ltd, and shall in addition pay any legal costs incurred by the seller on the attorney and client scale, including collection commission.
- 3.6 Payment may not be withheld pending the settlement of any dispute.

**4. PRICE INCREASE**

- 4.1 Price are based upon costs ruling at the date of the seller's quotation. An increase in costs between the date of the quotation and the date of delivery will entitle the seller to increase the price by an amount sufficient to compensate it for such additional costs.
- 4.2 If the purchaser disputes an increase in the price in terms of 4.1 above, the amount of the increase shall be determined by the seller's auditors acting as experts and not as arbitrators and their decision shall be final and binding upon the seller and upon the purchaser.

**5. WARRANTIES**

- 5.1 Test certificates or copies to test certificates relating to the goods are supplied in good faith but the seller is not the author of such test certificates and its obligation in respect of any test certificates does not extend beyond ceding to the purchaser any claim which it may have against the author of such certificate in respect of any goods sold by the seller to the purchaser.
- 5.2 The seller gives no warranty as to the suitability of the goods for the purpose for which they are intended to be used.
- 5.3 The seller shall not be liable under any circumstances whatsoever for loss of profit or damage direct or indirect, arising out of any cause whatsoever.
- 5.4 The purchaser shall not have any claim of any nature whatsoever against the seller for any failure by the seller to carry out any of its obligations as a result of any circumstances beyond the control of the seller including, without prejudice to the generality of the afore-going, any default or delay on the part of any sub-contractor, carrier, supplier or its servants.

**6. OWNERSHIP**

Ownership of goods delivered will not pass to the purchaser until the seller has received payment of the full price. **Risk of goods will pass on delivery**

- 6.1 Any item repaired in our workshops and not removed within sixty (60) days of repair will incur a storage charge equivalent to 20% per month of the cost of repair.

**7. PERMITS**

If any permits or other consent or approval is required under any law for the supply of goods, then the contract shall not take effect until the company obtains the permit, consent or approval.

**8. CANCELLATION**

- 8.1 The seller may cancel the contract in whole or in part if the purchaser commits any breach of its obligations to the seller or if judgment is granted against the purchaser or if the purchaser ceases to trade or compromise with any of the purchaser's creditors.
- 8.2 If the contract is cancelled through the fault of the purchaser, he will be liable for any expenses, cost, loss or damage incurred or suffered by the company.
- 8.3 If an amount owed by the purchaser to the seller from any cause whatsoever, whether under the contract or not, is not paid on the due date then, without prejudice to any other right which it may have, the seller may -
  - (a) require that all amounts then owed to it by the purchaser, from any cause whatever (and whether under the contract or not) shall immediately become due and payable.
  - (b) retain in its possession any goods of the purchaser until all those amounts have been paid.
  - (c) may until payment is made, suspend the carrying out of any of its then uncompleted obligations from any cause whatever and whether under the contract or not.
  - (d) terminate any credit facilities granted to the purchaser, whether under the contract or not.

**9. CLAIMS**

- 9.1 The purchaser will have no claim in respect of short mass or in respect of deliveries not in accordance with the contract, unless it gives written notice of its claim to the seller's sales office where goods were purchased within 24 hours after the date of delivery of the goods to which the claim related and unless the seller has been afforded an opportunity for checking, weighing and testing the goods delivered and has been permitted to make use of the purchaser's weighing apparatus free of charge for this purpose.
- 9.2 Illustrations, drawings, dimensions, or statement of weighs included in and/or accompanying this tender are approximate only and shall not form part thereof unless specifically confirmed by the company in writing.

**10. GENERAL**

- 10.1 Any indulgence, leniency or extension granted by the Company at any time shall not be construed as a novation or waiver of any of the rights of the Company whatsoever. Any contract arising from this tender shall be interpreted and construed in accordance with the laws of the Republic of South Africa whose courts shall have jurisdiction in respect thereof and in respect of any dispute whatsoever arising there from there out.
- 10.2 The conditions referred to above shall be applicable to previous, present and future purchases made and/or transactions concluded between the purchaser and the Company.

**11. JURISDICTION**

- 11.1 If the purchaser is a resident of or carries on business in the Republic then the company shall be entitled to institute any proceedings against the purchaser, arising out of the contract, any Magistrate's Court having jurisdiction over the purchaser even if the cause of action in question exceeds the jurisdiction of the Court.
- 11.2 Subject to 11.3, if the purchaser is not resident in and does not carry on business in the Republic, then the purchaser consents and submits to the jurisdiction of the Witwatersrand local Division of the Supreme Court of South Africa, and in all Courts of Appeal there from, for all purposes arising out of the contract.
- 11.3 If the purchaser is a resident of or carries on business in:
  - (i) Swaziland, Namibia or Lesotho the company shall be entitled to institute legal proceedings against the purchaser arising out of the contract, in any subordinate Court of the First Class of Botswana, Swaziland, Namibia or Lesotho respectively, having jurisdiction over the purchaser, even in the cause of action in question exceeds the jurisdiction of the Court.

**12. DOMICILIUM CITANDI ET EXECUTANDI**

I/we hereby choose domicilium citandi et executandi at my/our registered address detailed. I/we undertake to notify you within seven (7) days of any change of such address in writing by prepaid registered post thereafter I/we choose domicilium citandi et executandi at such amended address.

DATE

AUTHORISED SIGNATURE