



Reg. No: 2009/219480/23
V.A.T No: 4730254739

P O Box 20047
Crystal Park
1515

No.2 Forster Street
Rynfield, Benoni

Terms and Conditions of Sale

1. DEFINITIONS

In these conditions the words defined shall have the meanings assigned to them hereunder -

- 1.1 "K-Con Power and Steel cc" - the business trading as K-Con Power and Steel, Reg. No. 2009/219480/23;
- 1.2 "the customer" - the person, partnership, firm, association, company or close corporation or other entity applying for credit from K-Con Power and Steel cc in terms of an application for credit, and/or purchasing, buying or ordering any good and/or services from K-Con Power and Steel cc;
- 1.3 "goods" - all the goods sold by K-Con Power and Steel cc;
- 1.4 "services" - all the services rendered by K-Con Power and Steel;
- 1.5 "C.O.D" - cash on delivery, the invoice is due for immediate payment;
- 1.6 "30 days nett" - the invoice is due for payment 30 days from the monthly statement;
- 1.7 "SATS" - South African Transport Services.

2. CONCLUSION OF CONTRACT

- 2.1 The customer may place an order for goods orally or in writing, which order shall constitute the customer's offer.
- 2.2 K-Con Power and Steel cc shall be entitled to accept the customer's order in whole or in part.
- 2.3 Upon acceptance by K-Con Power and Steel cc of the customer's order a contract of sale upon the terms set forth in these Conditions of Sale shall be deemed to have been concluded between the customer and K-Con Power and Steel cc in respect of the goods and/or services which K-Con Power and Steel cc has agreed to supply.
- 2.4 Any order form delivered to K-Con Power and Steel cc which reflects the customer's name shall be deemed to have emanated from the customer, and shall be binding on the customer, notwithstanding that such order may have been given or signed by a person not duly authorised by the customer.

3. DELIVERY

- 3.1 The delivery of goods and/or services shall be by K-Con Power and Steel cc, SATS or private carrier or in such other manner as may be expressly agreed between K-Con Power and Steel cc and the customer.
- 3.2 SATS or any other carrier shall be the agent of K-Con Power and Steel cc.
- 3.3 K-Con Power and Steel cc shall be liable for any of the charges of SATS or any other carrier, unless otherwise agreed.
- 3.4 K-Con Power and Steel cc shall have the right to deliver the goods in whatever quantities and on however many separate occasions as it in its discretion may decide.
- 3.5 K-Con Power and Steel cc delivery note signed or counter-signed by the customer or any agent or employee of the customer shall for all purposes be deemed to be accurate in all respects and binding on the customer.
- 3.6 Insofar as the delivery of goods and/or services is concerned, time shall not be of the essence, unless otherwise agreed upon in writing, of any contract between K-Con Power and Steel cc and the customer and any delivery or despatch dates mentioned in any quotation, order or other documentation shall be approximate only and not of any contractual effect.
- 3.7 In the event of any delay in delivery by K-Con Power and Steel cc, or failure to effect delivery, for any reason whatsoever, other than a wilful breach by K-Con Power and Steel cc, then -
 - 3.7.1 the customer shall not be entitled to cancel the contract;
 - 3.7.2 the customer shall have no claim for any loss or damages, whatsoever arising, against K-Con Power and Steel cc.

4. PRICE AND PRICE INCREASES

- 4.1 The price of the goods and/or services shall be stated by K-Con Power and Steel cc at the time of the conclusion of the contract unless varied in accordance with 4.3.
- 4.2 It is recorded that such price is based on the cost to K-Con Power and Steel cc of materials, labour, delivery charges, freight, import duty and the rate of exchange operating between the Rand and the currencies in the countries from which materials are purchased.
- 4.3 If prior to delivery of the goods and/or services in terms of 3, there is any increase in such cost or change in such rate, or if any taxes or duties are levied or if any laws are promulgated, or if any wage agreement is affected in the relevant bargaining council, which directly or indirectly increase the cost to K-Con Power and Steel cc of the manufacture of the goods, K-Con Power and Steel cc shall be entitled by written notice to the customer, to increase the price of the goods by an amount equal to such increased cost or rate of exchange.
- 4.4 If the customer disputes K-Con Power and Steel cc right to increase the price of the goods and/or services in a particular case, or disputes the amount of any increases claimed by K-Con Power and Steel cc, then he shall give written notice to that effect to K-Con Power and Steel cc within seven (7) days after receipt of notice of K-Con Power and Steel cc intention to increase the price;
 - 4.4.1 if the dispute cannot be resolved between the parties, it shall be referred to K-Con Power and Steel cc auditors for the time being;
 - 4.4.2 a certificate signed by K-Con Power and Steel cc auditors shall be final and conclusive proof of the amount due to K-Con Power and Steel cc in respect of the price of goods and/or services.
- 4.5 If the customer does not dispute K-Con Power and Steel cc right to increase the price of the goods and/or services or the amount of the proposed increase in accordance with 4.3 then the increased price shall be binding upon the customer.

5. PAYMENT

- 5.1 In respect of each sale of goods and/or services the purchase price shall be payable by the customer to K-Con Power and Steel cc within the time period as indicated on the "Tax Invoice", after the date of K-Con Power and Steel cc monthly statement, reflecting such purchase price,

unless otherwise agreed in writing. In the case of a C.O.D invoice the full settlement amount as indicated on the invoice shall be due for immediate payment. For instance if the invoice indicates the terms as "30 days nett", the full purchase price shall be payable on or before thirty (30) days after the date of K-Con Power and Steel cc monthly statement, reflecting such purchase price.

- 5.2 In the event of K-Con Power and Steel cc accepting any post dated cheque, promissory note or other bill of exchange from the customer in respect of any indebtedness of the customer, then the acceptance by K-Con Power and Steel cc of such post dated cheque, promissory note or bill of exchange shall be without prejudice to K-Con Power and Steel cc rights in terms of any contract.
- 5.3 If the price of any goods and/or services is not paid on the due date, the customer shall be obliged to pay interest thereon at the maximum permissible rate of interest as determined by the Usuary Act No 73 of 1978 as amended from time to time, such interest to be reckoned monthly in advance from the due date to date of payment.
- 5.4 All payments shall be made to K-Con Power and Steel cc in South African currency and free of deduction and set-off.
- 5.5 In the event of a customer failing to make payment of any amount on the due date, then the full amount then owing by the customer (whether due or not) shall immediately become due and payable, without prior notice to the customer.
- 5.6 A certificate signed by any member, manager or assistant manager of K-Con Power and Steel cc (whose appointment need not be proved) reflecting the amount owing by the customer to K-Con Power and Steel cc, and of the fact that such amount is due, owing and payable, shall be prima facie proof of the fact therein stated for the purpose of any action (whether by way of provisional sentence or otherwise), proof of debt on insolvency or liquidation, or for any purpose whatsoever where the amount of such claim is required to be established and the customer shall bear the onus to prove that such amount is not owing or due.
- 5.7 K-Con Power and Steel reserves the right to, without notice, cancel or revoke any discounts given on any overdue invoices.

6. **SUSPENSION OF DELIVERIES**

- 6.1 If any amount due by the customer to K-Con Power and Steel cc is not paid on the due date, K-Con Power and Steel cc shall have the right to suspend all further deliveries of goods to the customer and to cancel all sales of goods already concluded.
- 6.2 Notwithstanding anything to the contrary herein contained, K-Con Power and Steel cc shall have the right to suspend any delivery under contract at any time if in its sole discretion it considers that -
- 6.2.1 the amount owing by the customer (whether due or not) has reached the limit to which it is prepared to allow the customer credit;
- 6.2.2 or if it comes to its notice or attention that the customer's financial position has deteriorated;
- 6.2.3 or if it no longer considers the customer to be creditworthy;
- 6.2.4 or the customer does not acknowledge that any contract is upon the terms set forth in these conditions of sale.

7. **PASSING OF OWNERSHIP AND RISK**

- 7.1 Until such time as the customer has paid the purchase price in full in respect of any purchase of goods and/or services, the ownership in and to all such goods and/or services shall remain vested in K-Con Power and Steel cc.
- 7.2 K-Con Power and Steel cc shall, in its sole discretion, without notice to the customer, be entitled to take possession of any such goods which have not been paid for and in respect of which payment is overdue, in which event the customer shall be entitled to a credit in respect of the goods so returned being the price at which the goods are sold or the value thereof as determined by K-Con Power and Steel cc.
- 7.3 The risk in and to the goods and/or services shall pass from K-Con Power and Steel cc to the customer on delivery notwithstanding that ownership will not pass to the customer until full payment of the purchase price.

8. **CLAIMS AGAINST THE COMPANY AND RETURN OF GOODS**

- 8.1 No claim against K-Con Power and Steel cc arising out of the sale of goods and/or services by K-Con Power and Steel cc shall be capable of being enforced and K-Con Power and Steel cc shall not be liable in respect of such claim unless a written notice setting forth the nature of the claim and the amount claimed has been delivered to K-Con Power and Steel cc within fourteen (14) days of the delivery of the goods in respect of which the claim is made.
- 8.2 Goods correctly supplied are not returnable without the prior written consent of K-Con Power and Steel cc and in any event shall not be considered unless arranged within fourteen (14) days of delivery and where accepted will be subject to a 10% handling charge.
- 8.3 The customer acknowledges that no returns will be considered of any cable which has been cut to the customer's specification.
- 8.4 Goods supplied for cash may not be returned under any circumstances.

9. **EXCLUSIONS**

- 9.1 K-Con Power and Steel cc shall not be liable under any circumstances whatsoever for any loss or damages of any nature whatever, whether direct or indirect, consequential or otherwise, sustained as a result of any goods sold and/or services rendered by K-Con Power and Steel cc under any contract being defective or not conforming to the description thereof, or as a result of any other cause whatsoever, and K-Con Power and Steel cc liability in respect of any goods sold and/or services rendered by it shall be limited to that provided for in 9.3.
- 9.2 K-Con Power and Steel cc -
- 9.2.1 does not warrant or represent that the goods and/or services are fit for any particular purpose (whether or not that particular purpose is known to K-Con Power and Steel cc);
- 9.2.2 shall not be liable to the customer in any way whatever for any defect, whether latent or patent, in any goods sold as sub-standard or as reject or as seconds.
- 9.3 If any goods, not being goods of the type described in 9.2.2 are latently, patently, or otherwise defective and a claim lies against K-Con Power and Steel cc in respect of such goods, the K-Con Power and Steel cc may at its option decide either to -
- 9.3.1 replace the defective goods;
- 9.3.2 or reimburse the customer in respect of the price of the goods;
- 9.3.3 or require the customer to accept the goods at a reduced purchase price to be agreed, provided that if the parties are unable to agree on the amount of the reduction that question shall be submitted to be resolved by an independent person agreed upon between K-Con Power and Steel cc and the customer, and failing such agreement, appointed by the President for the time being of the Natal Law Society and that person's decision shall be final and binding upon K-Con Power and Steel cc and the customer.
- 9.4 Any decision of K-Con Power and Steel cc in terms of 9.3 shall be notified to the customer in writing.
- 9.5 If so required by K-Con Power and Steel cc the customer shall be obliged to re-deliver the defective goods to K-Con Power and Steel cc at the customer's own cost and expense.
- 9.6 K-Con Power and Steel cc shall not be liable under any circumstances whatever for any loss or damage of any nature whatever whether direct or indirect, consequential or otherwise, arising out of any contract with a customer and in any event the liability of K-Con Power and Steel cc to the customer shall be limited to that provided for in 9.3.

10. **BREACH**

- 10.1 K-Con Power and Steel cc shall be entitled, without prior notice to the customer -
- 10.1.1 to cancel any contract and/or any part thereof subsisting with the customer and to claim return of the goods sold thereof;
- 10.1.2 or to claim from the customer immediate payment of any monies due by the customer to K-Con Power and Steel cc notwithstanding any earlier agreement for credit, whether same is due for payment or not,
- if : -
- 10.1.2.1 the customer fails to pay on the due date for payment thereof any amount due to K-Con power and Steel cc under any contract; or

- 10.1.2.2 any cheque, promissory note or bill of exchange given to K-Con Power and Steel cc in respect of any indebtedness of the customer under any contract is dishonoured by non-payment; or
- 10.1.2.3 the customer's estate is provisionally or finally sequestrated or it is placed in provisional or final liquidation or under provisional or final judicial management; or
- 10.1.2.4 the customer commits any act of insolvency in terms of Section 8 of the Insolvency Act; or
- 10.1.2.5 the customer enters into any compromise with his creditors; or
- 10.1.2.6 the customer fails to satisfy any default judgement granted against him within seven (7) days after date of Judgement.

11. **CESSION**

- 11.1 The customer does hereby irrecoverably and in rem suam cede, pledge, assign, transfer and make over unto and in favour of K-Con power and Steel cc all of its right, title, interest, claim and demand in and to all claims, debts, book debts of whatsoever nature and description and however arising which the customer may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal personae whomsoever ("the customer's debtors") without exception as a continuing covering security for the due payment of every sum of money which may now or at any time hereafter be, or become owing by the customer to K-Con Power and Steel cc from whatsoever cause or obligation howsoever arising which the customer may be or become bound to perform in favour of K-Con Power and Steel cc.
- 11.2 Should it transpire that the customer at any time entered into prior Deeds of Cession or otherwise disposed of any of the right, title and interest in and to any of the debts which will from time to time be subject to this Cession, then this Cession shall operate as a Cession of all the customer's revisionary rights.
- 11.3 Notwithstanding the terms of the afore going Cession the customer shall be entitled to institute action against any of its debtors provided that all sums of money which the customer collects from its debtors shall be collected on K-Con Power and Steel cc behalf provided further that K-Con Power and Steel cc shall at any time be entitled to terminate the customer's right to collect such monies/debts.
- 11.4 The customer agrees that K-Con Power and Steel cc shall be entitled at any time or times hereafter to give notice of this Cession to all or any of the customer's debtors.
- 11.5 The customer further agrees that K-Con Power and Steel cc shall at any time be entitled to inspect any of the customer's books or records and in addition shall be entitled to take possession of such books and records (of whatsoever nature) to give effect to the terms of the Cession.

12. **VOETSTOOTS**

The goods shall be regarded as having been sold voetstoots without warranty against latent defects therein. No liability whatsoever shall arise furthermore on the part of K-Con Power and Steel cc for any representation or warranty made, or alleged to have been made, at any time in respect of the goods sold by K-Con Power and Steel cc to the customer.

13. **SET-OFF**

It is agreed that set-off shall operate automatically as a matter of law at the moment reciprocal debts between K-Con Power and Steel cc and the customer come into existence and independently of the will of the parties and it shall not be necessary for either K-Con Power and Steel cc or the customer to specifically raise set-off. Upon the operation of an automatic set-off aforementioned, the debts shall be mutually extinguished to the extent of the lesser debt.

14. **ACCEPTANCE OF DELIVERY**

Signature by the customer or by any representative of the customer of K-Con Power and Steel cc delivery note shall be regarded as acceptance by the customer that the goods reflected in such delivery note have been properly and completely delivered.

15. **INDEMNITY**

The customer acknowledges that where K-Con Power and Steel cc is not the manufacturer of the goods. The customer accordingly indemnifies and holds K-Con Power and Steel cc harmless against any claim that may be brought against K-Con Power and Steel cc in consequence of such goods being defective and causing any damage whatsoever whether through accident or negligence, gross negligence, or any other cause.

16. **CESSION BY K-Con Power and Steel cc**

K-Con Power and Steel cc shall, at any time, in its sole discretion, be entitled to cede all or any of its rights in terms of this Agreement and Deed of Surety-ship to any third party, without prior notice to the customer.

17. **RELAXATION INDULGENCES**

Any condonation of any breach of any of the provisions hereof or other acts or relaxation indulgence or grace on the part of K-Con Power and Steel cc shall not in any way operate as or be deemed to be a waiver by K-Con Power and Steel cc of any rights under this Contract or be construed as a novation thereof.

18. **CHANGE OF OWNERSHIP OF THE CUSTOMER'S BUSINESS**

- 18.1 The customer undertakes to notify K-Con Power and Steel cc in writing within seven (7) days of any change in ownership of the customer's business or should the customer be a company or close corporation, any share transaction where the majority shareholding is affected or where there is a change of member's interest, failing which notice the entire balance owing, whether due or not, will immediately be deemed to be due and payable by the customer.
- 18.2 In addition to the afore going, the customer acknowledges that immediately upon any change of ownership in the customer, any outstanding amount whether due or not, shall be deemed to be forthwith payable by the customer to K-Con Power and Steel cc.

19. **LEGAL CHARGES**

In the event of K-Con Power and Steel cc instructing its attorneys to recover money or goods from the customer, the customer shall be liable for and pay all legal costs incurred by K-Con Power and Steel cc on the attorney and own client scale, including any collection commission.

20. **INTERPRETATION AND JURISDICTION**

- 20.1 This contract shall be interpreted according to the laws of the Republic of South Africa.
- 20.2 Notwithstanding the amount which may at any time be owing by the customer to K-Con Power and Steel cc, the parties do hereby consent, in terms of Section 45 of the Magistrates Court Act No 32 of 1944 as amended to the jurisdiction of the Magistrates Court having jurisdiction for the determination of any action or proceedings otherwise beyond the jurisdiction of the said Court which may be brought by K-Con Power and Steel cc against the customer arising out of any transaction between the parties, it being recorded that K-Con Power and Steel cc shall be entitled, but not obliged, to bring any action or proceeding in the said Court.

21. **DOMICILIA**

- 21.1 All notices by the one party to the other shall be given in writing by prepaid registered post, telegrams, or delivery by hand -

- 21.1.1 to K-Con Power and Steel cc at No.2 Forster St, Rynfield, Benoni;
- 21.1.2 to the customer at the trading address referred to in the Application for Credit Facilities which addresses the parties choose as their domicilia citandi et executandi.
- 21.2 The parties shall be entitled to change the address as referred to in 21.1 from time to time provided that any address selected by either of them shall be situated in the Republic of South Africa and any such change shall only become effective upon receipt of notice in writing by the other party of such change.
22. **NO OTHER CONDITIONS BINDING**
- 22.1 K-Con Power and Steel cc shall not be bound by any oral statements, recommendations, figures, advises, formulae, specifications, prices quoted, acceptances or representations unless they are in writing and signed on behalf of K-Con Power and Steel cc by its duly authorised representative.
- 22.2 All sales of goods and/or services by K-Con Power and Steel cc are subject to these conditions of sale and no other conditions shall be binding on the parties notwithstanding that such conditions may be annexed to, contained in or incorporated by reference in, any documents exchanged between K-Con Power and Steel cc and the customer and purport to regulate the terms of any purchase by the customer.
- 22.3 No variation of any contract shall be binding upon K-Con Power and Steel cc unless in writing and signed by a duly authorised representative of K-Con Power and Steel cc.
23. **GENDER**
- 23.1 Unless inconsistent with the context. words relating to any gender shall include the other genders, words relating to the singular shall include the plural and vice versa and words relating to natural persons Shall include associations of persons having corporate status by statute or common law.

Signed by the customer or its duly authorised agent, who hereby warrants his authority to sign on behalf of the customer.

Signed at _____ this _____ day, of _____ 20 _____

Signature: _____

Print Name: _____ Designation: _____