

CONDITIONS OF SALE

The Consumer Protection Act may apply to a transaction between the Seller and the Buyer where the Buyer is an individual or is a juristic person (like a company, close corporation, Trust or partnership) with either an asset value or annual turnover of less than R2 million, at the time of the transaction.

1. Definitions

- a) the "Seller" means Kelly Parker Mouldings cc;
- b) the "Buyer" means the person, firm or company who places an order with the Seller of the purchase and/or supply of goods;
- c) the "Goods" means the products supplied by the Seller which are the subject of an order placed by the Buyer with the Seller;
- d) "Special Order Goods" means Goods supplied which are non-standard size, custom made, where size alterations are required or where design alterations have been performed.

2. Contractual Terms

- a) These conditions shall apply to all contracts for the sale of goods entered into by the Seller to the exclusion of the terms and conditions of the buyer;
- b) All drawing, illustrations, performance data and other details in the Seller's catalogues, sales or promotional literature or elsewhere are included as a guide only and while such details are printed in good faith they shall not bind the Seller. The Seller reserves the right to change specifications without prior notice at its absolute discretion;
- c) No variation, cancellation or waiver of these conditions shall be of any effect unless made in writing signed by a duly authorized officer of the Seller and the Buyer;
- d) Typographical or clerical errors or omissions shall be subject to correction;
- e) The Buyer must notify the Seller within seven days of the date of the Seller's acceptance or acknowledgment of order if such acceptance or acknowledgment does not accurately confirm the Buyer's order failing which the Buyer shall be bound by the terms of the acknowledgement;
- f) The Buyer shall not be entitled to cancel any order for special-order goods without the written consent of the Seller. Where the Buyer cancels any order which is not an order for special-order goods, then the Seller will be entitled to impose a reasonable charge for the cancellation of that order and the Buyer will be obliged to pay this charge, on demand.

3. Glazing

All Glazing done in accordance with the requirements of the National Building Regulations.

4. Installations

- a) Seller limits the scope of work to install in pre-formed openings, all other work pertaining to the installation is for the Buyers account;
- b) A "Call out Fee" will be charged in the case that the openings are not ready for installation. The "Installer" will at his discretion due to time constraints reschedule if necessary. No further work will continue until the call out fee has been settled.
- c) The Seller will charge Buyer for any additional goods and services that are required to perform installation i.e. Hiring of Generator, Scaffolding, additional finishing strips, ironmongery, etc.

5. Creation of Contractual Relations

Unless previously withdrawn the Seller's quotations and tenders shall remain valid for the period stated therein or if no period is stated for 30 days. The Seller's offers, estimates, quotations, tenders and price lists are invitations to treat only. All orders must be accompanied by sufficient information to enable the Seller to proceed without delay with the execution of the order. All the orders require the Seller's acceptance in writing in order to create a contract. Any such acceptance shall nevertheless be subject to the buyer's credit being approved and to cancellation without liability at the instance of the Seller should the Seller subsequently find the Buyer's credit inadequate.

6. Prices

- a) All prices are for collection and include only such goods and accessories as are specified in the quotation and are for the quantities therein expressed. If the Buyer shall request any variation, any extra cost arising from such variation shall be payable by the Buyer.
- b) Unless otherwise specified prices quoted do not include Value Added Tax which will be added at the rate prevailing at the appropriate tax point.
- c) A delivery charge will be imposed within the Gauteng and surrounding areas. The Seller shall determine the route and method of carriage and any special requirements of the Buyer shall be subject to additional charge.
- d) Unless otherwise specified prices quoted include the Seller's and/or suppliers standard non-returnable packaging. It is the Buyer's responsibility to dispose of all packaging after delivery.
- e) Any time before delivery has been completed the Seller shall be entitled to vary the price of the Goods to take into account all or any of the following factors:-
 - (i) where goods are imported any variation of currency exchange rates or special taxes or charges imposed by any government;
 - (ii) increased costs resulting from the prohibition or other actions of any government;
 - (iii) increased labour costs;
 - (iv) increased material costs;
 - (v) increased transport costs;
 - (vi) implementing any request of the Buyer for expedited despatch or changes in delivery, schedule, completion dates, quantities, designs or specifications;
 - (vii) delays caused by instruction of the Buyer or by failure of the Buyer to give adequate instructions or information.

7. Payment

Unless otherwise agreed in writing by the Seller payment is strictly PAYMENT PRIOR TO DELIVERY OR COLLECTION. Time of payment shall be the essence of all contracts. In default of payment on the due date the Seller without prejudice to its rights hereunder shall have the right to charge the Buyer interest at the rate of 3% above the prime rate from time to time of First National Bank. The Seller shall at its discretion (without prejudice to its right to treat the contract as repudiated and claim damages) be entitled to withhold despatch of the Goods or any of them until all monies owing to the Seller have been paid in full.

8. Property and Risk

- a) Until payment in full for all the goods sold by the Seller to the Buyer (whether under this or any other contract) has been received by the Seller:
 - (i) Ownership of goods shall remain with the Seller;
 - (ii) The Seller reserves the right to dispose of the Goods and the seller shall be permitted to enter upon the Buyer's premises at all reasonable times to recover the Goods for this purpose;
 - (iii) The Buyer shall store the Goods so that they may be readily identified as the property of the Seller and during such time the Buyer shall ensure that the Goods are kept and maintained in the condition in which they were delivered.
- The Buyer may sell the goods or any part thereof only by way of a bona fide sale at full market value, and where he does so, he shall be entitled for the purpose of such sale to remove those goods from the said place of storage and upon their delivery to the person purchasing from the Buyer, ownership of those goods shall pass from the Seller.
- b) The risk in the Goods shall subject to clause 10(b) pass to the Buyer or the Buyer's carrier.

9. Delivery

- a) The time of delivery shall not be of the essence of the contract. The period quoted for delivery commences from the date of order acknowledgment and Deposit if required, but is an estimate only. Whilst the Seller shall use reasonable commercial endeavours to deliver the Goods by the date (if any) specified on the order acknowledgment it shall not be liable in any way for delay in delivery from any cause whatsoever and howsoever arising nor shall such delay entitle the Buyer to reject the Goods or treat the contract as repudiated or re-enters the Seller liable for damages in any way;
- b) Delivery is to the nearest point to site on a road suitable, in opinion of the driver, for the vehicle used, and the Seller reserves the right to make an additional charge for loading or off-loading outside the hours 8:00am to 5:00pm Monday to Friday or for waiting time in excess of one hour on delivery or in the event of any special arrangement of whatsoever nature being required;
- c) The Seller shall have the right to despatch any portion of the Goods covered by the contract separately and to invoice the Buyer for such portion(s) so despatched on the same terms and conditions as are contained herein;
- d) It is the Buyer's duty to inform the Seller of the detailed delivery requirements in advance, to provide due warning and notice of any changes in such requirements, and to provide the necessary labour and equipment to unload the vehicle without delay.
- e) Delivery of the Goods by the Seller to the Buyer may take place at the Seller's premises or any other premises agreed by the parties. The Seller will be entitled, and the Buyer authorises the Seller, to deliver the Goods to any employee, agent or representative of the Buyer. Delivery in this manner will be treated as delivery by the Seller to the Buyer. Unless agreed to otherwise by the Seller in writing, any delivery of the Goods to the Buyer outside of the Seller's premises shall be at the Buyer's own risk and must not be relied upon by the Buyer.

10. Non-acceptance by Buyer

- a) If by reason of the Buyer's default the Goods or any of them have not been taken up or delivered by any date specified for such taking up or delivery, then:-
 - (i) The Buyer shall nevertheless pay the Seller in accordance with Clause 7 of these conditions as if such taking up or delivery had occurred; and
 - (ii) the Buyer shall pay the Seller a storage charge in respect of any of the Goods which have not been taken up or delivered together with the cost of any additional handling and transport incurred. In the event that such storage by the Seller shall continue for a period exceeding six weeks the Seller may (without prejudice to any other rights which may have accrued) treat the contract as repudiated;
- b) During the period of any storage of the Goods or any of them by the Seller as contemplated by sub-clause 10a (ii) above such goods shall be at the risk of the Buyer.

11. Loss or Damage in transit and non-delivery

- a) No responsibility will be accepted by the Seller for any shortage or damage occurring in transit unless:-
 - (i) where the Goods are delivered other than by the Seller's transport the Buyer makes claim in writing providing full particulars to the Secretary of the Seller at the Seller's registered office within 5 working days of receipt of the Goods;
 - (ii) where the Goods are delivered by the Seller's transport details of any shortage and/or damage are endorsed on the delivery note;
- b) No responsibility will be accepted by the Seller for non-delivery of the Goods unless the Buyer makes a claim in writing providing full particulars to the Seller at its registered office and (where appropriate) the carrier not more than 7 days after the proposed date of delivery stated in the order acknowledgment.

12. Cancellation and Variation

No cancellation or variation of an order by the Buyer shall be effective unless made in writing and until accepted in writing by an authorised officer of the Seller. The Seller reserves the right to refuse to accept such cancellation or variation or to accept cancellation or variation only subject to such conditions as the Seller may determine. Acceptance by the Seller shall be subject to payment by the Buyer of such cancellation or variation charges as the Seller shall deem reasonable. Such charges shall take into account expenses incurred and commitments made by the Seller and all other losses due to such cancellation or variation.

13. Force Majeure

Should any event occur where the Seller's premises or elsewhere which is beyond the control of the Seller such as by way of example industrial action or dispute (including strike or lockout) shortage of materials, act of God, war, fire, flood, drought or breakdown of machinery, as a result of which the performance of this contract is prevented or delayed:-

- a) Without prejudice to its rights in the event of breach of contract by the Buyer the Seller reserves the right to cancel delivery or other performance of the Seller's obligations under any contract in whole or in part and in the event of the Seller exercising such right the Seller's liability shall be limited to the repayment to the Buyer (without interest) of any part of the purchase or contract price or charge already received by the Seller and attributed to any unfulfilled or cancelled part of the contract less any expenses incurred by the Seller down to the date of cancellation in part performance of the contract;
- b) If such prevention or delay continues for 60 days the Buyer may elect either to cancel the contract or to allow the order to remain on the books of the Seller and to be completed at some later date at an adjusted price to be determined by the Seller.

14. Guarantee and limitation of liability

- a) Subject to the provisions in this Clause 14, the Goods are guaranteed for a period of 5 years against faulty materials or workmanship.

This guarantee is subject to the Goods being treated in accordance with the Seller's recommendations for their storage, handling, installation, treatment, maintenance and use and excludes ironmongery. All products are sold untreated and unpainted unless specific reference is made on the quote to do so. It is important to note that natural variations in colour, texture or surface checking of wood is not considered a defect. If a door or window is painted or a black or similar dark stain is applied it is not covered by the guarantee.

- b) The Seller makes no other representation or warranties in relation to the Goods. All other conditions express or implied statutory or otherwise in respect of the Goods or their use and which are capable of exclusion are hereby excluded. Subject to sub-clause 14(a) above and to the extent that is permitted by the law the Seller hereby excludes its liability for any loss or damage whether in contract, tort or otherwise whether direct or consequential (other than for death or personal injury resulting from the proven negligence of the Seller) suffered by the Buyer in connection with Goods or their use.
- c) Prior to placing an order, or after an order has been placed or Goods have been delivered by the Seller, the Seller may from time to time give the Buyer information, guidance, advice and suggestions relating to the Goods. To the extent allowed by law, the Seller does not warrant, represent or guarantee that the information is accurate or suitable for any purpose. The information is to be used by the Buyer at its own risk and must not be relied upon by the Buyer.
- d) **Clause 14 contains assumptions of risk and/or liability by the Buyer and limit and/or exclude liabilities, obligations and legal responsibilities which the Seller may have towards the Buyer and other persons. These clauses also limit or exclude the Buyer's rights and remedies against the Seller and place various risks, liabilities, obligations and legal responsibilities on the Buyer.**

15. Sub-contracting

The Seller shall be free to employ sub-contractors.

16. Copyright and Confidentiality

The Buyer hereby acknowledges that the copyright in all documents (including drawings) supplied by the Seller to the Buyer shall vest in the Seller. In no circumstances whatsoever shall such documents or their contents be used for any purpose other than that for which they were supplied.

17. Waiver

No waiver by either party in respect of any breach by the other shall operate as a waiver in respect of any subsequent breach.

18. Severability

Any provisions of these conditions which in any way now or subsequently contravene the law shall be deemed severable and shall not affect any other provisions herein.

19. Governing Law

Any contract of which these conditions form part shall be governed by the laws of South Africa and shall be subject to the exclusive jurisdiction of the South African Courts.

20. Notices

Any notices required to be served hereunder shall be deemed to be properly served if sent by prepaid registered or recorded delivery post to the last known address of the party to be served and shall be deemed to be duly served the day following the date of posting.

21. Clause Headings

The clause headings shall not affect the interpretation of these conditions.

The Buyer consents to the Seller verifying the Buyer's credit worthiness and other details in its sole discretion and furnishing credit references, where requested.

If this agreement and/or Goods or Services provided under this agreement is regulated by or subject to the Consumer Protection Act, it is not intended that any provision of this agreement contravenes any provision of the Consumer Protection Act and therefore all provisions of this agreement must be treated as being qualified, to the extent necessary, to ensure that the provisions of the Consumer Protection Act are complied with.

Each clause of this agreement is separate and separable from the others. To the extent that any clause or part of any clause in this agreement is declared by a court of competent jurisdiction to be unlawful, invalid or unenforceable for any reason, then that clause or part thereof will be severed from this agreement and treated as if it had not been inserted therein, without affecting the validity or enforceability of the remainder of this agreement.

These terms and conditions may be amended or added to by the Seller at any time, in its sole discretion.

The Buyer acknowledges that he has read and understood these terms and accepts them as binding.