

Professional Kitchen Solutions CC Terms and Conditions

The following conditions are applicable to all goods and services supplied and/or rendered by Professional Kitchen Solutions CC, hereinafter referred to as PKS and shall govern any contract between the Buyer and PKS.

1. Definitions

- a. "The Seller" means Professional Kitchen Solutions CC.
- b. "The Buyer" means the Purchaser of any goods supplied by the Seller
- c. "The Goods" means the goods supplied by the Seller to the Buyer

2. Incorporation of Conditions

These conditions will form part of any Contract whereby the Seller agrees to supply goods to the Buyer. These conditions will take precedence over any terms and conditions submitted by the Buyer whether before or after these conditions. No variation whatsoever to these conditions will be valid unless specifically agreed to in writing.

3. Specifications

Any literature published or submitted by the Seller which contains any descriptions, specifications, drawings or prices of the goods is, published for guidance only. The Seller reserves the right to make modifications in the designs and specifications of the goods without notice to the Buyer.

4. Price

- a. Unless otherwise agreed in writing any price quoted by the Seller on any quotation or order is subject to variation at the discretion of the Seller to reflect increases, which may occur from time to time in list prices and costs (including, without limitation, costs of transportation, materials, labour, taxes or other fees and charges), prior to delivery.
- b. In the event that a variation in price shall occur between the date of the acceptance of the Buyers order and the delivery of the goods by the Seller, the Seller will advise the buyer of any such variation in price (the "new price") and the Buyer will be obliged to take delivery of the goods at the new price. If the Buyer is not prepared to pay the new price for the goods then the Buyer must advise the Seller within seven days of the notification of the new price that he is unwilling to do so whereupon neither party will be under any obligation to the other in respect of goods which have not been delivered.
- c. Where applicable VAT, GST or any other government taxes at the statutory rate at the date of delivery will be charged.
- d. unless otherwise stated the price for the goods as stated on the invoice is exclusive of delivery

5. Payment

- a. Payment for the goods shall be made in accordance with provisions, which are agreed between the Seller and the Buyer. If no specific provisions have been agreed between the Seller and the Buyer payment shall be made strictly in accordance with the terms published by the Seller from time to time.
- b. All payments due as detailed on the Sellers invoice must be paid in full with the exception of any discount which has previously been agreed in writing by the Seller and the Buyer.
- c. The Seller reserves the right to demand in full or partial payment of any monies due and payable on any invoice before proceeding further with any other order placed by the Buyer.
- d. Where payment of any monies is overdue the Seller may suspend the delivery of any goods ordered by the Buyer or terminate any order placed by the Buyer without any further liability to the Buyer. Any costs incurred by the Seller in obtaining payment of overdue amounts will be borne by the Buyer.
- e. If payment is not received by the due date the Seller may charge interest on the overdue amount at the rate of 2 % per month or part month. Any sums due as interest payments will be debited to the buyer at the end of each month for which any payments are outstanding.
- f. Payments effected through the post shall be entirely at the risk of the Buyer.
- g. If the Buyer defaults with payment that is due, the Seller reserves the right to demand payment for all amounts owed by the Buyer, even if it is not due yet.

6. Ownership and Risk

- a. Property in the goods shall not pass to the Buyer until the buyer has made payment in full of all sums due to the Seller in respect of the goods provided always that the Seller shall nevertheless be entitled to maintain an action for the invoice price or any part thereof unpaid at any time after the due date for payment.
- b. If payment in full is not made by the due date then without prejudice to any other rights which the Seller may have it shall be at liberty to remove and sell the goods and apply the proceeds of sale towards satisfaction of the Buyer's liability to the Seller under the contract of sale and the Seller shall be entitled to recover damages in respect of any loss or damage caused by the failure of the Buyer to make payment in full by the due date.
- c. Property in the goods supplied shall not pass to the Buyer or to any other person merely by virtue of their becoming affixed to the real or personal property of the Buyer or some other person.
- d. Pending payment of the purchase price the Buyer shall:
 - i. store the goods separately or in such a way that they are clearly marked as the property of the Seller.
 - ii. not alter or modify them in anyway
 - iii. keep the goods fully Insured against all usual risks at the Buyers expense and procure that the Sellers interest is noted on the policy.
- e. The buyer shall be entitled to sell the goods to a third party within the normal course of it's business provided that the proceeds of the sale of the goods be for the Sellers account and all monies deriving there from are identifiable until such time as the goods are paid for by the buyer. All amounts owing to the Buyer by his Customers for goods purchased from the Seller, are ceded to the Seller for any outstanding amounts owed to him by the Buyer.
- f. For the purpose of this clause only:
 - i. where it is not possible to ascertain on the balance, of probabilities whether any payment for goods made by the Buyer to the Seller is made in or towards satisfaction of the purchase price of particular goods such payments shall be deemed to have been appropriated and applied by reference to the date of order of the Sellers invoices delivered to the Buyer taking the earliest dated invoice first.
 - ii. where it is not possible to ascertain on the probabilities whether goods supplied by the Seller to the Buyer in the possession of the Buyer are goods in which property has passed to the Buyer all goods supplied by the Seller shall be deemed to have been dealt with by the Buyer on a first in first out basis.
- g. the risk of the goods shall pass to the Buyer immediately after delivery. if the Buyer fails to take delivery when delivery falls due, PKS shall be considered to have tendered and the Buyer to have refused to accept delivery, in this event the risk in the goods shall pass to the Buyer immediately.

7. Delivery

- a. The Seller will use its best endeavors to deliver the goods to the Buyer in accordance with delivery times agreed between the Seller and the Buyer. Notwithstanding this time shall not be of the essence and the Seller shall not be liable in any way for any loss or expense sustained by the Buyer.
- b. The Buyer will supply to the Seller all necessary details to enable the Seller to make delivery of the goods. The Buyer will accept delivery by mutual agreement with the Seller. If the Buyer refuses to accept delivery of the goods then:
 - i. the Seller shall be entitled to the payment of all monies due in respect of such delivery.
 - ii. the Seller shall be entitled to be indemnified by the Buyer for any consequential loss, damage or expense sustained as a result of the refusal by the Buyer to accept delivery.
 - iii. the Seller shall be entitled to sell the goods to a third party without prejudice to its rights to claim damages from the Buyer or the Seller may store the goods at a place of it's choosing at the cost of the Buyer.
- c. The Seller reserves the right to make delivery installments unless otherwise expressly agreed. in writing.
- d. The Seller reserves the right to postpone or cancel delivery in whole or in part when it is delayed in or prevented from making delivery where such is occasioned by strikes, lockouts, trade disputes or any other cause beyond the control of the Seller but without limitation act of God, act of Buyer or it's agents, embargo or other government act or regulation, fire, accident, war, riot, delay in transportation, inability to obtain adequate labour, materials or manufacturing facilities, pestilence and the Seller shall not be bound to obtain goods in the open market with which to replace the goods delivery of which has been postponed or cancelled.
- e. The place of 'delivery will be the Buyers place of business unless otherwise agreed in writing and on delivery of the goods the Buyer shall be responsible for their unloading.

8. Damage or loss in transit

- a. The responsibility of the Seller for damages or loss in transit ends when the goods arrive at the designated point of delivery. The Seller will not be responsible for the damage or loss during or after the unloading of the goods.
- b. Within twenty-four hours of receipt of the goods the Buyer will examine them and where necessary will immediately notify the Seller by telephone, facsimile or e-mail and notify the Carrier by use of the Carrier's delivery document of any error in quantity or description of the goods delivered, or that the goods were mixed with others not included in those which were to be delivered.

9. Guarantee and Liability Limitations

- a. The Seller warrants to the Buyer that it has the right to sell the goods and that the goods are free from any charge or encumbrance unknown to the Buyer.
- b. If any of the goods sold to the Buyer are faulty in workmanship or materials and any such faults become apparent prior to resale by the Buyer, the Buyer shall notify the Seller immediately in writing. Upon receipt of the written notice the Seller shall dependant upon the circumstances, either:-
 - i. replace the faulty goods with similar goods (if similar goods are available); or
 - ii. refund the invoice price.
 PROVIDED that the faulty goods are returned to the Seller.
- c. Save for damages for death or personal injury caused by the negligence of the Seller in the performance of the contract the Buyer shall not be entitled to claim from the Seller any loss, damage or consequential loss which arises by way of negligence or other default.

10. Resale of the goods

The Seller and the Buyer acknowledge that goods, which have been purchased by the Buyer from the Seller, are to be resold by the Buyer on his own account. The price at which the goods are to be resold is a matter within the discretion of the Buyer. The Buyer acknowledges that the Seller does not wish the goods to be sold in the open market as loss leaders. The Seller reserves the right to cancel the delivery of any goods where it has evidence that the Buyer has sold or intends to sell goods of the same or similar description whether obtained from the Seller or elsewhere as loss leaders. Before canceling any delivery in these circumstances the Seller shall serve written notice on the Buyer to this effect.

11. Lien

Except to the extent that condition 6 shall apply the Seller shall have a lien on all goods which the Buyer agrees to purchase from the Seller for all monies due from the Buyer to the Seller under any contract between them.

12. Default by the buyer

If the Buyer defaults in or commits any breach of any of its obligation to the Seller or ceases to carry on its business or a substantial part thereof or if any distress or execution is levied on any of the Buyers property or if the Buyer makes or offers to make any arrangements or composition with its creditors or commits any act of insolvency or if any resolution or petition to wind-up the Buyers business is presented or passed or a Judicial manager is appointed of the Buyers undertaking, property or assets or any material part thereof then the Seller shall be entitled forthwith to terminate any contact with the Buyer then subsisting and on written notice of such termination being posted by the Seller to the Buyer's last known address any and every subsisting contract shall be deemed to have been terminated without prejudice to any claim or right which the Seller might otherwise make or exercise.

13. Governing law

These conditions and any contract of which they form part shall be governed by and construed in accordance with the laws of The Republic of South Africa.

14. Miscellaneous

- a. The unenforceability or invalidity of any part of these conditions shall not affect the enforceability or validity of the remainder.
- b. Failure by the Seller in anyone or more instances to pursue any breach of these terms by the Buyer shall not be taken to constitute a condonation or waiver of the same.

15. Cession

The Buyer may not cede or assign its rights or obligations in terms of this contract to any other party.

16. Waiver

Any relaxation, which PKS may permit on any occasion in regard to any of the Buyers obligation, shall not prejudice or be regarded as a waiver of PKS's right to enforce those obligations on any subsequent obligation.

17. Costs

In the event of any breach by the Buyer of its obligation to PKS under the contract, all costs and disbursements, including legal costs on the attorney and client scale, incurred by PKS in recovering possession of the goods, or in tracing the Buyer and/or locating the goods, or collection commission, storage charges, cost of valuation of the goods, selling commission, removal and other charges of a like nature, shall be borne by the Buyer.

18. Domicilium

The Buyer chooses the address at which the goods are to be delivered as domicilium et executandi, for all purposes under this agreement. The purchaser may change its domicilium by giving 14 (fourteen) days written notice to the Seller of its new domicilium. PKS selects Unit 1, 129, 9th Road, Kew, Johannesburg as its domicilium citandi et executandi, for all purposes under this agreement.

19. Jurisdiction

PKS shall be entitled to institute proceedings arising out of the contract in the magistrate's court having jurisdiction over the customer even if the cause of action exceeds the jurisdiction of the court.

20. Return of Goods

- a. no goods may be returned or exchanged without PKS's written consent.
- b. if PKS does consent in terms of 20.a the Buyer will be obliged to pay a handling fee of 10% (ten percent) of the price of the goods or service.
- c. no goods returned or exchanged will be accepted unless it is in its original packaging.
- d. returned spare parts will not be accepted if the packaging is not entirely in tact.
- e. if PKS does consent to accept goods returned in contravention of 20.c and 20.d the buyer will be obliged to pay a handling fee of 20% (twenty percent) of the price of the goods.

21. Interpretation

The headings of these conditions are for convenience only and are not to be taken into account for purposes of interpreting the contract.

22. Customer Order

The Buyer is deemed to have signified its acceptance of these conditions by, inter alia, placing any order with PKS or otherwise contracting with PKS. In the event of an order being given to PKS on the Buyers official order form, the Buyer will be stopped from denying the validity of such order, notwithstanding the fact that such order may have been given or signed by a person not authorised by the Buyer.

We acknowledge receipt of and accept in full the terms and conditions of sale of PROFESSIONAL KITCHEN SOLUTIONS CC.

NAME AND TITLE OF SIGNATORY

SIGNATURE AND RUBBER STAMP

DATE