

## **STANDARD CONDITIONS OF CONTRACT OF POWERMITE (THE COMPANY) - A division of Hudaco Trading (Pty) Ltd**

### **1) GENERAL**

- 1.1 These conditions are applicable, according to context, insofar as are specifically excluded or modified in writing to all contracts of sale, manufacture, installation, erection or otherwise. In the event of any conflict of contracts between our standard conditions and any other conditions which the customer may seek to impose, then and in such event our conditions shall be the overriding conditions
- 1.2 Unless previously withdrawn, a tender, quotation or offer shall remain open for acceptance for the period stated herein or, when no period is stated, for thirty days from the date hereof. Acceptance of a tender, quotation or offer shall be subject to confirmation in writing by us and a contract shall not become binding and enforceable until despatch by us of written confirmation aforementioned, duly signed by an authorised officer of the company.
- 1.3 All particulars of tender, quotation or offer, including drawings, plans, illustrations and the like are to be regarded as approximate only, unless otherwise stated. All estimates, performance figures, measurements, weights, dimensions and the like are intended to present a general idea of the subject of the contract and are not intended to be construed as giving rise to guarantees, warranties or representations and no contractual obligation in regard thereto shall exist unless expressly guaranteed and warranted by us in writing.
- 1.4 All drawings, plans, illustrations, written estimates and other documents submitted by us shall remain our property and shall be returned to us on request unless a contract is concluded, in which event they shall be retained by the customer for maintenance purposes only and shall not be made available by the customer to any third party, for any purposes whatsoever and which prohibition shall be deemed to be absolute.
- 1.5 Our agents, salesmen, servants and employees have no authority to give guarantees or warranties, or to make any representations, or presentations, or promises on our behalf and no guarantee, warranty or representation or promise shall be of force and effect unless incorporated in a document signed by our duly authorised officer.
- 1.6 All products supplied by the company are strictly to the company's specification only, unless otherwise precisely specified in our written official communications. Details such as dimensions and loading capacities of goods, and/or cables are only given for the convenience and are not at all binding. The aforementioned stipulations can only be over-ruled by the Company's authorised officer in writing.
- 1.7 The authorised signature of the customer on the credit application and/or delivery note signify the acceptance of our Standard Conditions of Contract.

### **2) DELIVERY**

- 2.1 In the case of a contract not providing for installation or erection by us, delivery shall be deemed to have been completed as soon as the goods have been despatched from our factory, stores or premises to the customer.
- 2.2 In the case of a contract providing for installation or erection as an inclusive price of the material supply and not tendered for as a separate price, delivery shall be deemed to have been completed as soon as the goods are installed or erected on site and in working order. If a separate price for these services is quoted, conditions as stated in Item 2.1. apply.
- 2.3 In the event of the customer being unable or unwilling to take delivery, upon notification by us that we are ready to effect delivery, the customer shall nevertheless adhere to the terms of payment and shall, in the case of contracts not providing for installation or erection, pay to us on request 2% of the contract price as storage for each month or part of a month during which the customer fails to take delivery as well as all reasonable sums expended by us for handling charges.
- 2.4 Notwithstanding anything herein contained the contrary, if delivery is delayed through or by reason of any act, omission or default on the part of the customer, delivery shall, in such event, be deemed to have been effected as at the date of such act, omission or default, the customer irrevocably waives any lien which it may at any stage have over any goods effected by such contract.
- 2.5 If the contract includes installation or erection as provided for in Item 2.2., and if we are obliged to carry out a test run of the subject matter of the contract, the customer shall permit and allow us to carry out the test run immediately upon completion of the installation or erection. If the said test run cannot

be carried out for reasons beyond our control, within fourteen days after completion of the installation or erection, our obligations in respect of such test run shall be deemed to have been fulfilled.

2.6 As soon as delivery is effected or deemed to have been effected, the risk in the subject matter of the contract shall pass to the customer.

### 3) TIME FOR DELIVERY

3.1 The time given for delivery is the date from despatch by us of the written confirmation mentioned in Clause (1.2.) hereof. We will use our best endeavours to adhere to the date given but accept no liability of any kind for failure to do so, unless a guarantee in writing shall have been given to deliver within a specified time.

3.2 If we shall have guaranteed delivery within a specified time and shall have failed to deliver within the time guaranteed or any extension thereof, and if the customer shall have suffered loss by our delay, we will honour deduction from the contract price should this be stated in our tender, in the form of liquidated and agreed damages, and not as a penalty. If such amount becomes payable, it shall be in full satisfaction of our liability for such a delay.

3.2 Should delivery be hindered or delayed by an extension of the contract, deviations from specifications, suspension of the works, or any act or default on the customer, or any cause whatsoever beyond our control, including war, civil commotions, riots, rebellion, strikes, lockouts, floods, epidemics, unusual inclemency of the weather, fire or accidents and whether such hindrance or delay occurs before or after the time or extended time for delivery, the customer shall grant us from time to time such extensions of time, either prospectively, or retrospectively, as may be reasonable and any such extension of time shall exonerate us from liability in respect of such delay.

### 4) INSTALLATION OR ERECTION

In the case of a contract providing for installation or erection by us, the following special provisions shall be complied with by the customer:

- 4.1 4.1.1 ensure that, the site and the roads leading thereto are levelled and cleared, all foundations are completed and dry and all foundation walls are in position and levelled with soil.
- 4.1.2 ensure that, in the case of indoor installations or erections, all walls, ceilings, doors and windows are complete.
- 4.1.3 provide adequate and dry premises, which can be locked for storing our machinery, parts, materials, tools and the like and provide adequate working space and suitable accommodation for our men.
- 4.1.4 provide lifting tackle, mobile forges, props, wedges, bedding cement, cleaning and joining materials, lubricants, fuel, cooling water, driving ropes and belts, including their installation and necessary alterations, scaffolding, and all the like materials and requisites.
- 4.1.5 provide all necessary workmen, excluding the special fitters, engineers and supervisors, supplied by us, but including carpenters, mechanics and other skilled or unskilled labour required by us.
- 4.1.6 provide heating, lighting, power, water and air, including connections therefore to the site.
- 4.2 The customer shall ensure that, prior to the commencement of installation or erection all masons', carpenters', mechanics' and other preliminary work is sufficiently advanced to enable us to proceed with the installation or erection immediately on arrival of our employees, workmen or agents and shall further ensure that our employees, workmen or agents shall be able to proceed without interruption or delay.
- 4.3 If the installation or erection is delayed through no fault on our part, the customer shall be liable for and pay all costs incidental to or in respect of the waiting time and travelling expense of our employees, workmen or agents.
- 4.4 The customer shall, when so required, certify and confirm in writing such completion and/or acceptance of work.
- 4.5 All labour supplied by either party shall remain in the employ of that party who shall undertake all liability in respect of Sick Benefits, Workmen's Compensation, Unemployment Insurance and the like items.
- 4.6 In the event of the contract providing for installation or erection by our employees, workmen, or agents at piece work rates:
  - 4.6.1 fixed *per diem* rates will be charged, together with any time, Sunday or holiday pay which may be required.
  - 4.6.2 Waiting and travelling time will count as working time.

- 4.6.3 Fares for return travelling by rail, boat or 'plane (as agreed) shall be borne and paid for by the customer who shall bear the transport charges for luggage, tools and the like.
- 4.6.4 If board and lodging are available at or near the site of installation or erection the necessary arrangements for the same will be our responsibility. If such board and lodging are not so available, the customer will be responsible to make the necessary arrangements for the employees, workmen or agents.

## 5) PRICE ADJUSTMENT

- 5.1 The contract price, expressed in South African currency, is based upon the rate of exchange against the foreign currency/ies of origin in relation to imported materials as pertain at the date of submission of our tender/quotation or offer and is furthermore based on our existing labour and raw material costs as at such date. If during the period of the contract there is any fluctuation in any of the foregoing the amount of any increase/decrease shall at our option be added to/subtracted from the contract price and shall be for the account of and payable by the customer or be credited to the customer as the case may be.
- 5.2 In the event of the suspension of or delay in delivery arising from instructions given or lack of or change in instructions given by the customer, any loss or extra costs thereby incurred shall be added to the contract price and shall be for the account of and payable by the customer.
- 5.3 In the event of the contract providing for erection or installation and in the event of delay in completion thereof arising as a result of any default on the part of the customer, any loss or extra cost thereby incurred shall be added to the contract price and shall be for the account of and payable by the customer.
- 5.4 Notwithstanding any provisions in regard to the passing or incidence or risk generally between the parties, any increase in customs duties, import duties, currency exchange rates (relating to those items in the contract which may be imported), transport costs, cost of demurrage, freight charges (whether air, ocean, road or rail). Government surcharge of any imported goods and similar such duties howsoever arising and items of a similar nature shall be borne and paid by the customer and to the extent that any dispute may arise in regard thereto, the provisions of sub- paragraph 5.4.1 shall be applicable.
  - 5.4.1 A certificate by our Auditors certifying that the contract price has been increased by reason of any of the aforementioned provisions and further certifying the amount of such increase from time to time shall be final and binding.

## 6) TERMS OF PAYMENT

- 6.1 The contract price is to be paid free of exchange at Johannesburg and without deduction of any kind, either by way of discount or otherwise. Payments effected through the post shall be at the risk of the customer.
- 6.2 Unless otherwise agreed upon and in the case of contracts not providing for installation or erection, payment of the contract price shall be effected on the thirtieth day of the month following that in which delivery is effected or deemed to have been effected.
- 6.3 Unless otherwise agreed upon and in the case of contracts providing for installation or erection, payment of the contract price shall be effected as to one third immediately the contract is confirmed in writing by us as provided in Clause 1.2. hereof, as to a further one-third upon expiration of half the time for delivery stipulated in the contract and as to the remaining one-third on the thirtieth day of the month following that in which delivery is effected or deemed to have been effected.
- 6.4 Notwithstanding that delivery and possession of the subject matter of the contract may have been given to the customer and that the risk therein may have passed to the customer, ownership therein shall remain vested in us until the whole of the contract price (including interest on the same or any part thereof and any other charge or sums payable by the customer) shall have been paid.
- 6.5 Interest at the maximum permissible legal rate per annum will accrue to us on all overdue payments, calculated from the day on which any payment is overdue and in the event of any dispute, a certificate by the company's auditors substantiating the rate of interest and/or the amount payable shall be final and binding.

## 7) GUARANTEE

Subject to clause (1.3) hereof and subject to any guarantee or warranty given by us in writing, we

undertake to replace or repair at our option, free of cost, any goods supplied by us direct to the customer, proved to our satisfaction within a period of six months from delivery or, if we are responsible for erection or installation, from the date of completion or erection or installation, to be defective in workmanship or material, provided that:

- 7.1 written notice of complaint is given within seven days of the discovery of the defect.
- 7.2 the goods are returned, carriage paid, to us and shall, in the event of replacement, become our property howsoever occurring.
- 7.3 the defect has not manifested itself as a result of fair wear and tear, nor as a result of faulty or negligent operation, overloading, abuse, unsuitable working conditions or similar circumstances.
- 7.4 the defect has not manifested itself as a result of fire, erosive corrosive liquids or gases or extreme temperature.
- 7.5 the repaired or replaced goods, shall only remain the subject to this guarantee until the expiration of the aforesaid period of six months.
- 7.6 in the case of goods not manufactured by us, the customer shall only be entitled to the benefit, insofar as it may be transmitted to the customer, of any guarantee given by the manufacturer and our liability is limited to making the benefit of the manufacturer's guarantee available to the customer.
- 7.7 in the case of goods supplied or erection or installation effected by a sub-contractor, there shall be no liability upon us and the customer shall look at the sub-contractor for fulfilment of any guarantee or warranty given under the sub- contract.
- 7.8 save, as aforesaid, the customer shall have no claim against us of any kind whatsoever by reason of any defect or default on the part of ourselves or our servants or by reason of any breach by us of warranty or of contract or any defect, latent or patent, and the implied warranty against latent defects is expressly excluded, and we shall not be liable for any consequential damages or loss.

#### **8) LIMITATION OF LIABILITY**

- 8.1 We shall not be liable for any consequential damages of whatsoever nature and we shall not be liable for any damages, injury or loss to the customer, the customer's property or the customer's employees, workmen or agents, whether such damage, injury or loss be caused by our negligence or not. We shall further not be liable for any damage or loss caused by or arising out of stoppages, vis major floods, strikes, lockouts, riots, civil commotions, wars or rebellion.
- 8.2 In the event of our partial or total inability to complete the contract for reasons beyond our control, the customer shall have the right to claim a pro rata reduction in the contract price but the customer shall have no right to claim compensation or any damages of whatsoever nature from us.

#### **9) BREACH OF CONTRACT**

In the event of the customer committing a breach of any or all of the provisions of the contract or in the event of the customer being placed under a Provisional or Final Order of Sequestration and/or Liquidation and/or Judicial management or in the event of the customer effecting a compromise with creditors or if the customer suffers anything to be done which, in our sole discretion may prejudice us, then we shall, without prejudice to any other rights we may have, be entitled:

- 9.1 to claim immediate payment of the full balance of the contract price outstanding as well as payment of all other sums due to us, or
- 9.2 to cancel the contract and retake possession of the subject matter thereof, and
- 9.3 in either event to claim any damages which we may have suffered and to the extent that the customer may have effected any payments on account of the contract, then at our option such payments shall be forfeited to us/or at our option retained by us pending the outcome of any litigation or arbitration confirming our entitlement thereto.
- 9.4 on cancellation the ownership of the goods relating to that portion of the contract which has been cancelled and which may have passed to the customer, shall, at our option, revert to us, but we shall nevertheless be entitled to retain possession of the same as security for the payment by the customer to us of all amounts which the customer shall become liable to pay to us in terms of the contract as a result of any breach of the contract by the customer. To the extent that it may be applicable, the customer hereby renounces any lien which it may have on the goods.

#### **10) CESSION**

The customer shall not have the right to cede, assign or transfer any of his rights or obligations arising

out of the contract without our prior written consent.

11) **SEVERABILITY OF CONTRACT**

In the event of any provision of the contract being valid, such provision shall be regarded as severable from the remainder of the contract which shall remain of full force and effect.

12) **ARBITRATION**

All disputes, differences or claims (other than a claim for payment of the contract price or for any amount due by the customer to us in terms of the contract) shall at our option be determined by arbitration under the Arbitration Act of 1965 or any amendment thereof.

13) **NON-WAIVER**

Any relaxation of any of the terms of these Conditions of Contract or any indulgence shown by either ourselves or the customer to the other shall in no way prejudice the rights of such party, and shall not be construed as a waiver or novation thereof.

14) **JURISDICTION**

The customer consents to the jurisdiction of the Magistrate's Court in respect of all proceedings arising out of this contract, notwithstanding the amount claimed or the nature of the claim. In no way derogating therefrom, we shall be entitled to institute any action arising out of this contract in any other court of competent jurisdiction.

15) **COSTS**

Should any action be taken by us against the customer in consequence of a breach by the customer of any of its obligations under the contract, then and in such event, the customer shall be obliged to effect payment on demand, of all Attorney and Client costs incurred by us in such regard, irrespective of whether proceedings have actually been instituted.

16) **RIGHT TO APPROPRIATE**

We shall be entitled, at any stage during the subsistence of this contract, to appropriate any monies received by us from the customer to any indebtedness of the customer extant, this notwithstanding anything to the contrary elsewhere contained.

17) **WHOLE CONTRACT**

This contract constitutes the entire contract between ourselves and the customer and it is recorded save as specifically referred to herein, that no representations of whatsoever nature or kind were given which induced the contract, and no variation of this contract shall be of level efficacy save insofar as the same is reduced to writing and signed by our authorised officer and the customer.

18) **DOMICILIUM**

The customer chooses its address as set forth on the face of the relevant contract as its *domicilium citandi et executandi* for all purposes arising hereout, whereas we select the address Powermite – A Division of Hudaco Trading (Pty) Ltd, 47 Galaxy Avenue, Linbro Business Park, Frankenwald, Sandton 2090.