

ATLAS COPCO COMPRESSORS CANADA, A DIVISION OF ATLAS COPCO CANADA INC. STANDARD TERMS AND CONDITIONS OF PURCHASE

“**Buyer**” means Atlas Copco Compressors Canada, a division of Atlas Copco Canada Inc., a company incorporated under the laws of Canada, with a place of business at 5060 Levy, St. Laurent, Quebec, H4R 2P1, Canada. “**Supplier**” means the company to whom the PO is issued and located at the address on the PO and that supplies the Products to the Buyer. “**PO**” means this purchase order as well as this purchase agreement. Buyer and Supplier individually shall be referred to as “party” and collectively as the “parties”. “**Products**” means the equipment, items, parts, materials, work and/or services, and related accessories thereof that Supplier supplies to Buyer.

For valuable consideration, the receipt of which is acknowledged, the parties hereby agree as follows:

1. General. (a) Any Products purchased from Supplier, whether the order for those Products is initiated by facsimile, electronically, or any other form of transmission, are purchased subject to these terms and conditions of purchase agreement (this “**PO**”). (b) Supplier’s commencement of work on the Products, issuance of an order acknowledgement, shipping of the Products, or issuance of an invoice, whichever occurs first, will be deemed an effective mode of acceptance of Buyer’s offer to purchase in accordance with this PO. Acceptance of this PO is limited to the acceptance of the express terms and conditions contained in this PO. Any written or oral terms and conditions or other provisions different from or in addition to the terms and conditions of this PO, whether contained in any quotation, proposal, order acknowledgement, terms and conditions of sale, or otherwise (including if this PO is deemed an acceptance of an offer of Supplier) are objected to and rejected, will be deemed a material alteration of the terms and conditions of this PO and will not be binding, unless contained in a writing that is signed by duly authorized representatives of Buyer and Supplier and expressly refers to this PO. In this event, those specific terms and conditions will prevail to the extent of the inconsistency. (c) **Conflict with another agreement between the Parties.** Any conflict that may exist between the terms and conditions of this Agreement and the terms and conditions of any other agreement between the parties (pertaining to the sale of products purchased hereunder) shall be resolved in favor of this PO having precedence over said any other agreement. Any reference in this PO or Buyer’s documentation to Supplier’s proposals or quotations for Products are only for descriptive purposes of the Products to be covered hereunder, and do not constitute Buyer’s acceptance of any terms and conditions set forth therein.

2. Pricing; Payment. Unless otherwise stated on the PO, all prices for Products are in **Canadian Dollars**, are not subject to increase, and must be complete (no additional charges may be added to the stated price, including charges for packaging, crating, shipping, labeling, storage, containers, custom duties, taxes, insurance, storage or any other charges). Unless otherwise stated on the PO, payment for Products will be **Net-60 days** from the date of Buyer’s receipt of an accurate invoice for Products accepted as conforming by Buyer. Supplier’s invoices must include Supplier’s supplier number, date and number of Buyer’s purchase order, the date, place, and quantity of each delivery, Supplier’s H.S.T. registration number, and other information reasonably requested by Buyer. If Supplier delivers Products in installments and these installments are not specified by Buyer, payment will be due following receipt of the final installment. Buyer’s payment for a Product does not constitute acceptance of the Product. Buyer shall establish the on-going credit worthiness of Supplier.

3. Time; Delivery. Time is of the essence of this PO. Supplier must promptly notify Buyer of any actual or anticipated delay of delivery and take all reasonable steps to avoid or end the delay without additional cost to Buyer. Unless otherwise specified in writing by Buyer on the front side of this purchase order: (i) unless otherwise stated on the PO, shipping terms are Delivered Duty Paid (**DDP; latest Incoterms**) Buyer’s named point of destination, with title and risk of loss passing to Buyer at such point of destination; (ii) deliveries must be made at the times and of the quantities specified by Buyer on the front side of this purchase order; and (iii) Supplier may not make shipments in advance of the times specified by Buyer. If necessary to meet the delivery schedule, Buyer may order expedited delivery, and Supplier will pay any resulting excess charges. By written notice, Buyer may also temporarily suspend or postpone any shipping schedule, as it deems necessary without any liability or additional costs to Buyer.

4. Product Specifications. All Products must strictly conform to all written specifications, designs and other documentations that Buyer provides to Supplier or approves in writing. In the event Buyer does not provide written specifications, the Products must conform to Supplier’s published specifications (including but not limited with respect to dimensions, capacities, and standards stated or illustrated in catalogues), and with any Product samples approved by Buyer; provided, however that in all events, the Products shall be of at least the highest standards of quality and workmanship applicable to the industry. Products that do not strictly meet Buyer’s specifications may be rejected by Buyer and returned to Supplier, at the Supplier’s sole cost in accordance with Section 6 below.

5. Changes. Buyer may make changes in drawings, designs, specifications, materials, packaging, time and place of delivery, and method of transportation. If any change causes a material increase or decrease in the cost or the time required for performance, Buyer will make an equitable adjustment to the purchase price or delivery schedule, or both. Supplier agrees to accept any changes subject to this Section. The right to an adjustment will be deemed waived unless asserted by Supplier within ten (10) business days after the change is requested. Supplier may not make any change with respect to any drawings, designs, specifications, materials, packaging, time and place of delivery unless agreed in writing by Buyer. No extras shall be allowed except pursuant to written changes approved in writing by Buyer.

6. Inspection; Rejection; Quality Assurance. If any Product is found to be defective, or otherwise not in conformity with the requirements or any applicable specifications of this PO, at Supplier’s expense, Buyer may, at its option and sole discretion, and in addition to any other rights and remedies Buyer may have: (a) reject and return the Products; (b) require Supplier to inspect the Products and remove and replace non-conforming Products with conforming Products; (c) upon notice to Supplier, take any action necessary to cure all defects or bring the Products into conformity with the requirements of this PO; or (d) with respect to a Product comprised of a service, reject the service(s) and require Supplier to re-perform any defective portion of the service(s). Buyer shall have the right to inspect and verify the Products while in the process of being manufactured at any time, and at any of Supplier’s factories or facilities, upon reasonable written notice.

7. Excusable Failure or Delay. Neither Buyer nor Supplier is responsible for failing to perform under this PO where the failure or delay is attributable to any act of God or of the public enemy, war, riot, civil unrest, fire, flood, quarantine, tornado, hurricane, embargo, epidemic, act of government or other causes similar to the foregoing, beyond the reasonable control of the party so affected. The party seeking to avail itself of any of these excuses must promptly notify the other party of the reasons for the failure or delay, and must exert commercially reasonable efforts to avoid further delay. The party seeking to avail itself of these excuses must have contingency plans in place to ensure that its obligations under this PO are met under a reasonably prompt timetable.

8. Termination for Default. By written notice to Supplier specifying the effective date (which may be immediate), Buyer may terminate this PO for default in whole or in part, or the purchase of any quantity of Products, without further compensation to Supplier (other than payments due for delivered conforming Products) in the event: (a) Supplier fails to complete or deliver any Product when required; (b) Supplier is otherwise in breach of any material term of this PO; (c) Buyer determines any of Supplier’s representations, warranties, or covenants in this PO to be untrue; (d) Supplier ceases to conduct its operations in the normal course of business; (e) any proceeding under any insolvency or bankruptcy laws is brought by or against Supplier, a receiver for Supplier is appointed or applied for, or an assignment is made by Supplier for the benefit of creditors; or (f) Buyer reasonably believes that Supplier is unable to meet its obligations under this PO. Upon receipt of a notice of termination, Supplier will immediately: (i) cease work as directed in the notice; (ii) place no further subcontracts or orders for materials or services, except to the extent necessary to complete the continued portion of the order; and (iii) cancel all subcontracts to the extent they relate to terminated work. Upon termination, Supplier will provide Buyer with all completed work and work in progress, including all designs, drawings, specifications, and other documentation and material required or produced in connection with the work. In the event of termination for default, in addition to the rights available under this PO, Buyer will also have all rights and remedies available to it at law and in equity. If a court of applicable competence should find any termination for default as improper, then said termination shall be deemed a termination for convenience by Buyer in accordance with Section 9 below.

9. Termination for Convenience. For convenience, by written notice to Supplier specifying the effective date, Buyer may terminate this PO for convenience in whole or in part, or its purchase of any quantity of Products ordered. Supplier shall then terminate all work and supply in accordance with the terms of said written notice. In this event, Buyer and Supplier will negotiate reasonable termination costs consistent with the cost of materials and labor incurred (and not otherwise mitigated) on ordered Products prior to the date of Buyer’s termination notice, provided Supplier takes all action reasonably necessary to mitigate those costs, in accordance with the present Section 9. Supplier shall promptly advise Buyer of the quantities or applicable Products on hand or purchased prior to termination and the most favorable disposition that Supplier can make thereof. Supplier shall, without reservation, comply with Buyer’s instructions regarding disposition of such work and materials. Buyer shall pay Supplier the purchase order price or finished Products and the Supplier’s direct reasonable out-of-pocket costs (excluding profit or losses) in Products process and raw materials, less: (i) the agreed value of any Products used or sold by Supplier with Buyer’s consent; and (ii) the reasonable value or costs (whichever is higher) of any defective, damaged, or destroyed Products or materials sold or used by Supplier without Buyer’s consent. Buyer shall not make any payments for finished Products, Products in raw process or raw materials manufactured or procured by Supplier unnecessarily in advance or in excess of Buyer’s delivery schedule, which shall be determined at Buyer’s sole discretion. Supplier will notify Buyer of Supplier’s actual cost of material and labor incurred within thirty (30) days after termination, or all claims of Supplier shall be waived. The foregoing provisions of this Section 9 shall be Supplier’s sole remedy against Buyer for termination for convenience.

10. Intellectual Property. (a) Supplier acknowledges that Buyer will be entitled to full and exclusive ownership of any and all inventions, creations, discoveries, or improvements, whether patentable or not, that are conceived or first actually reduced to practice in the performance of any order placed by Buyer. Supplier hereby assigns and agrees to assign to Buyer any and all such inventions, creations, discoveries, or improvements, and Supplier also assigns and agrees to assign to Buyer all intellectual property rights thereto, including any patents, trade secrets and copyrights issuing thereon. Supplier agrees to provide reasonable assistance to Buyer, at Buyer’s expense, for securing all such intellectual property rights and to cooperate with Buyer, its officers and agents, in obtaining, at Buyer’s expense, with respect to the prosecution thereof, patents on such inventions or discoveries in the name of and for the benefit of Buyer in Canada and/or foreign countries to the extent that Buyer may consider desirable. Supplier will procure from its employees, without charge to Buyer, the execution of all patent applications, assignments and other instruments necessary to the procurement of such patents and to the vesting of title thereto in Buyer. Supplier further agrees to promptly disclose in writing to Buyer any and all such inventions, creations, discoveries, or improvements, specifically pointing out concepts or features that Supplier believes to be new or different. Supplier agrees that all copyrightable works created in connection with the performance of this order shall be the sole and exclusive property of Buyer. To the extent that such works for any reason are not deemed to be, “works for hire”, Supplier hereby assigns to Buyer all proprietary interests, including copyrights, in such works, without further compensation.

(b) Buyer’s Intellectual Property. Buyer shall retain all rights, title, ownership and interest in and to all drawings, designs, specifications, technical data, trade names, trade marks, domain names furnished by or on behalf of Buyer for use by Supplier with this PO, including, without limitation all modifications or other changes made to same by Buyer. Seller or any third party (“**Buyer’s Intellectual Property**”). Seller acknowledges and agrees that all Buyer’s Intellectual Property shall be deemed proprietary to Buyer and confidential in accordance with Section 15 below, and shall be used by Supplier solely for purposes of this Purchase Agreement. Seller shall not make any copies, reproductions or reverse engineer of any if Buyer’s Intellectual Property in any way whatsoever. Upon completion, expiry or termination of this Purchase Agreement, Supplier shall promptly return all Buyer’s Intellectual Property to Buyer.

(c) **Intellectual Property Indemnification.** SUPPLIER WILL DEFEND, INDEMNIFY AND HOLD BUYER AND BUYER'S AFFILIATES (ANY COMPANY WHOSE ULTIMATE PARENT COMPANY IS ATLAS COPCO AB, SWEDEN, PLUS ATLAS COPCO AB) AND THEIR RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS, AND EMPLOYEES HARMLESS FROM AND AGAINST ANY SUITS, LIABILITIES, LOSSES, DAMAGES, CLAIMS, CAUSES OF ACTIONS, AND EXPENSES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, PENALTIES, INTEREST, COURT COSTS, EXPERT FEES, AND LAWYERS' FEES) IN ANY MANNER ARISING OUT OF OR RELATING TO ANY THIRD PARTY'S CLAIM THAT MANUFACTURE, USE, OR SALE OF ANY PRODUCT CONSTITUTES INFRINGEMENT OF ANY THIRD PARTY'S PATENT, COPYRIGHT, TRADEMARK OR PROPRIETARY INFORMATION. IN THE EVENT THAT A PRODUCT OR PART OF A PRODUCT IS HELD TO CONSTITUTE INFRINGEMENT, OR THE SALE OR USE OF THE PRODUCT OR PART ARE ENJOINED, REGARDLESS OF WHETHER THE DETERMINATION CONSTITUTES A FINAL JUDGMENT, SUPPLIER WILL, AT ITS EXPENSE, EITHER PROCURE FOR BUYER THE RIGHT TO SELL AND USE THE PRODUCT OR PART, OR REPLACE THEM WITH A SUBSTANTIALLY EQUAL BUT NON-INFRINGEMENT PRODUCT OR PART. SUPPLIER'S INDEMNIFICATION OBLIGATION DOES NOT APPLY TO THE EXTENT THAT ANY INFRINGEMENT IS DETERMINED TO BE THE RESULT OF SUPPLIER'S COMPLIANCE WITH DESIGNS FURNISHED BY BUYER.

11. Warranty. (a) Supplier warrants that all Products furnished under this PO will be: (i) new, of merchantable quality, fit for the purpose intended, and free from defects in workmanship, materials and design (except to the extent the design is developed by Buyer and is furnished by Buyer to Supplier); (ii) in full conformity with the written specifications that Buyer provides to Supplier or that Buyer approves in writing, or (to the extent Buyer does not provide written specifications to Supplier, or does not approve specifications in writing) the specifications for the Product will fully conform with Supplier's published specifications (including with respect to dimensions, capacities, and standards stated or illustrated in catalogues) and with all Product samples approved by Buyer; provided, however that in all events, the Products shall be of at least the highest standards of quality and workmanship customary in the industry; (iii) free of any encumbrances, liens, charges and security interests (collectively referred to as "**Liens**") of Supplier, as well as Liens of any third party and conveyed to Buyer with clear title; and (iv) Supplier warrants that any and all services will be performed in accordance with no less than the standards of care and diligence customarily practiced by persons in the industry performing similar services. (b) If any Product fails to conform to any of the above warranties, at Buyer's option and at Supplier's expense (including but not limited to all transportation costs and all other costs), Supplier will: (i) replace or repair the nonconforming Product; (ii) with respect to services, re-perform all services necessary to correct any nonconformity; or (iii) refund the purchase price of the nonconforming Product and any related costs incurred by Buyer. If Supplier does not replace, repair or re-perform, as applicable, within a reasonable time after notice, Buyer or a third party authorized by Buyer may after reasonable notice to Supplier make such replacement, repair, or performance, and charge Supplier for the cost incurred by Buyer in doing so. These warranties will survive acceptance and payment and will run to Buyer, its customers, and their successors and assigns, and are not be deemed to be exclusive, but are in addition to any warranties, express or implied, which are otherwise provided by law.

12. Compliance with Laws. Supplier certifies that it complies with all applicable federal, provincial, municipal, or local laws, rules, regulations, ordinances, orders, and rulings of all domestic and foreign governmental departments, branches, agencies, commissions, and courts having jurisdiction covering production, packaging, labeling, sale, and delivery of Products. All laws, rules, regulations, ordinances, orders, and rulings applicable to this order, and any contractual clauses or provisions required thereby, are herein incorporated by reference. Without limiting the generality of the foregoing, Supplier will comply with any applicable law pertaining to employment, safety, health, and environmental compliance.

13. General Indemnification. SUPPLIER WILL DEFEND, INDEMNIFY AND HOLD BUYER AND BUYER'S AFFILIATES (ANY COMPANY WHOSE ULTIMATE PARENT COMPANY IS ATLAS COPCO AB, SWEDEN, PLUS ATLAS COPCO AB) AND THEIR RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS, AND EMPLOYEES HARMLESS FROM AND AGAINST ANY SUITS, LIABILITIES, LOSSES, DAMAGES, CLAIMS, CAUSES OF ACTIONS, AND EXPENSES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, PENALTIES, INTEREST, COURT COSTS, EXPERT FEES, AND ATTORNEYS' FEES) IN ANY MANNER ARISING OUT OF OR RELATING TO (A) ANY PERSONAL INJURY, ILLNESS, DEATH, AND/OR PROPERTY DAMAGE (INCLUDING BUT NOT LIMITED TO ANY PERSONAL INJURY, ILLNESS, DEATH AND/OR PROPERTY DAMAGE SUFFERED BY ANY THIRD PARTY) THAT AT ANY TIME OCCURS DUE TO OR ARISING OUT OF ANY DEFECT IN WORKMANSHIP, MATERIAL OR DESIGN (EXCEPT TO THE EXTENT THE DESIGN IS DEVELOPED BY BUYER AND IS FURNISHED BY BUYER TO SUPPLIER) OF ANY PRODUCT; (B) SUPPLIER'S FAILURE TO COMPLY WITH SUPPLIER'S OBLIGATIONS UNDER THIS PO; AND/OR (C) ANY NEGLIGENT ACT OR OMISSION BY SUPPLIER, ITS EMPLOYEES, SUBCONTRACTORS, OR AGENTS IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF THIS ORDER. IF ANY PERSONAL INJURY, ILLNESS, OR DEATH OR PROPERTY DAMAGE IS HELD TO BE CAUSED BY THE JOINT OR CONCURRENT NEGLIGENCE OF SUPPLIER AND BUYER, THE FINANCIAL RESPONSIBILITY IN CONNECTION WITH ANY SUITS, LIABILITIES, LOSSES, DAMAGES, CLAIMS, CAUSES OF ACTIONS, AND EXPENSES SHALL BE BORNE BY SUPPLIER AND BUYER IN PROPORTION TO THEIR NEGLIGENCE.

14. Insurance. Without limiting Supplier's indemnity obligation hereunder, Supplier shall maintain the following insurance coverages for the duration of this PO and three (3) years following its termination or expiry: 1) broad form commercial general liability insurance in the amount of at least \$3,000,000 CAD per occurrence and \$5,000,000 CAD general aggregate; and 2) automobile insurance covering all auto in the amount of at least \$2,000,000 CAD per occurrence. Supplier shall add "Atlas Copco Canada Inc." as additional insured on the above policies evidenced by ISO forms and endorsements that meet the satisfaction of Buyer. Supplier agrees to waive subrogation against Buyer for all of these insurance coverages. Supplier shall immediately maintain said insurance coverages and furnish Buyer with certificates of insurance showing said coverages, including waiver of subrogation and additional insured endorsements, within seven (7) days of execution of this Purchase Agreement.

15. Confidentiality. Supplier (a) shall not publish or advertise in any manner the fact that Buyer has placed this order, (b) shall maintain as confidential and proprietary all information provided by Buyer pursuant to this order ("Buyer's Information") and shall not divulge or disclose any of Buyer's Information to any third party without prior written authorization set forth in a written instrument signed by an authorized officer of Buyer (c) shall not use any of Buyer's Information except to meet its obligations towards Buyer under this order, and (c) shall return all of Buyer's Information to or as directed by Buyer upon termination or expiration of this order. The obligations in sub-sections b and c above do not apply with respect to information disclosed by Buyer that (i) is publicly available at the time of disclosure; (ii) became publicly available through no act or failure to act on the part of Supplier; (iii) is independently developed by Supplier without using Buyer's Information; or (iv) is required to be disclosed by applicable law; however, in the event of occurrence of iv, Supplier shall provide Buyer with prompt notice allowing Buyer to obtain a protective order, and Supplier cooperate fully with Buyer in this regard. The obligations in this Section are applicable from the date the Buyer's Information is provided, and Supplier's obligations will terminate only from the moment and to the extent the Buyer's Information is or becomes generally available to the public (through no breach of any confidentiality obligations in this Section).

16. Additional Remedies. In addition to termination for default and all other rights pursuant to law and equity, Buyer shall have any or all of the following additional remedies against Supplier for breach of any provision of this PO by Supplier: 1) hold deficient Products at Supplier's expense subject to Supplier's disposal or return of same, at Supplier's own risk and costs, including all transportation; 2) off-set against any amount owing to Supplier; 3) withhold any payment owing to or any future payments from Supplier until the default or breach has been corrected to the satisfaction of Buyer; and 4) correct any deficiencies in the Products or have them corrected by a third party, at the Supplier's sole cost. Supplier shall be liable to Buyer for all costs and expenses additional to those which would have been incurred by Buyer, if there had been no default or breach by Supplier. All rights and remedies provided to Buyer in this PO are cumulative and shall be in addition to all other rights and remedies provided under law and equity.

17. No Assignment/ Sub-contracting by Supplier. Neither this PO, nor any right or obligation of Supplier, may be assigned or delegated by Supplier by contract, merger, operation of law, or otherwise, to any third party without prior written consent of Buyer, which consent will not be unreasonably withheld. Supplier may not sub-contract any work to be performed in connection with this PO without the prior written consent of Buyer, which consent will not be unreasonably withheld. Buyer may freely assign all or any portion of this PO to any party at its sole discretion.

18. Miscellaneous.

(a) **Independent Contractors:** Nothing in connection with this PO is intended to, or does, create any joint venture, partnership, agency or similar relationship between Buyer and Supplier, other than a buyer and seller relationship. Supplier is not, and it is not authorized to represent itself as, an agent or representative of Buyer for any purposes.

(b) **Waiver:** Either party's failure to insist in any one or more instance upon the full performance by the other party of any term, covenant, obligation, covenant or condition imposed on it by this Purchase Agreement will not be construed as a waiver of any right available to either party with respect to that nonperformance.

(c) **Governing Law:** This PO is governed exclusively by the laws of the Provinces of Ontario and Alberta, and Canada, without regard to its conflicts of laws principles that would have a contrary result. The United Nations Convention on the International Sale of Goods does not apply to this PO. Any dispute, claim, or controversy between Buyer and Supplier related to this PO that cannot be resolved through good faith negotiations will be adjudicated in a court of competent jurisdiction in the Province of Ontario, or in the Province of Alberta.

(d) **Invalidity:** If any provision of this PO is held void or unenforceable, that provision or portion will be void and the remainder of this PO will remain in full force and effect. In the event that either the scope or the restrictive period applicable to any covenant relating to any confidentiality obligations under this PO is deemed to be unreasonable in any court proceeding, the scope and/or restrictive period shall be reduced to equal the maximum scope and/or restrictive period allowable under the circumstances.

(e) **Captions:** All headings and numbering in these terms and conditions are for convenience of reference only.

(f) **Survival:** The provisions of this PO pertaining to intellectual property, confidentiality, warranties, insurance, additional remedies, and indemnification will survive its expiration or termination.

(g) **Entire Agreement:** This PO, along with any documents that Buyer provides (such as documents that set forth specifications), is intended by the parties as a final expression of their agreement with respect to these items, and is intended as a complete and exclusive statement of the terms of their agreement. No prior written or prior contemporaneous oral promises, representations, or agreements shall be binding. No course of prior dealing between the parties and no usage of the trade is relevant to determine the meaning of this PO.

(h) **Binding on Successors:** The provisions of this PO shall be binding upon and inure to the benefit of the successors and assigns of the parties, but this provision shall in no way alter the restriction hereon in connection with assignment and sub-contracting by Supplier.

(i) **Amendment:** This PO will not be amended, changed, or otherwise modified, unless such amendment, change, or modification is in writing in a subsequent written agreement that specifically refers to this PO, specifically states how it amends, changes or modifies this PO, and is signed by authorized representatives of both parties.