

TERMS AND CONDITIONS OF SALE

1 Introduction

These conditions shall form part of every contract of sale entered into by Atlas Copco (Ireland) Limited ("Atlas Copco") and any purported variation or exclusion (whether contained in any document of the buyer or otherwise) shall be of no effect unless accepted in writing by Atlas Copco.

2 Formation of Contract

- (a) An order whether or not based upon a quotation shall not be binding on Atlas Copco unless accepted by it in writing.
- (b) Any representations or warranties made or given by anyone on Atlas Copco's behalf prior to its acceptance of an order and not contained in Atlas Copco's written quotation or order acknowledgement are hereby expressly excluded.
- (c) Only such goods as are specified in Atlas Copco's order acknowledgement are included in the scope of the contract.
- (d) The buyer shall be responsible for ascertaining whether the capacity and performance of the goods are sufficient and suitable for its purpose.
- (e) Atlas Copco shall not be obliged to alter the performance or features of the goods following its acceptance of the buyer's order unless, at its absolute discretion, it agrees in writing to do so and subject to the payment by the buyer of an extra charge.

3 Specifications

All drawings, descriptive matter, weights, dimensions and specifications supplied by Atlas Copco are approximate only unless otherwise stated and all descriptions and illustrations contained in Atlas Copco's catalogues, price lists and advertising matter are by way of general description, are approximate only, and in no way are binding on Atlas Copco. Atlas Copco will supply a set of certified outline drawings after conclusion of the contract and on request of the buyer if separately contracted so to do.

4 Tests

Atlas Copco's products are carefully inspected, and where practicable, submitted to Atlas Copco's standard tests at Atlas Copco's works before despatch. If a special test in the presence of the buyer or his representative is required, this will be charged for, and in the event of the buyer failing to attend such test within seven days of Atlas Copco giving it notice that the test is ready for performance, the test will proceed in the buyer's absence. Unless otherwise agreed all tests will be carried out at Atlas Copco's works.

5 Prices

- (a) All prices quoted by Atlas Copco are exclusive of carriage and packing costs and exclusive of VAT, unless otherwise stated.
- (b) Where an order is placed and accepted for goods differing in size, quality, quantity or in any other way from the goods specified in Atlas Copco's quotation, an additional charge may be made.
- (c) Atlas Copco's prices are subject to alteration without notice and, unless otherwise agreed in writing, goods will be sold at the prices applicable at the date of despatch.

6 Payment

- (a) Unless otherwise agreed in writing, prices quoted are strictly net and payment shall be made within 30 days from the date of invoice.
- (b) In the event of any delay in payment Atlas Copco shall be entitled to charge interest on any outstanding balance at the rate of 2% per calendar month or part thereof. During such period of default and at any other time when the buyer shall be in breach of the terms of the contract or Atlas Copco shall have reasonable grounds for doubting that payment will be made on the due date, Atlas Copco shall be entitled to withhold deliveries without prejudice to its right to payment for goods delivered and for work undertaken and expenses incurred in connection with undelivered goods which shall become immediately due and payable on demand.

7 Delivery

- (a) Unless otherwise agreed, the goods shall be sold ex-works and the place for delivery shall be Atlas Copco's premises.
- (b) Atlas Copco shall endeavour to deliver the goods within the time stated or by the agreed delivery date, but shall not be liable for late delivery unless it shall have given the buyer a delivery guarantee which contains an agreed payment by way of liquidated damages for late delivery. In the event of late delivery, Atlas Copco shall have no liability except for payment of such liquidated damages and delay in delivery shall in no case entitle the buyer to cancel the order unless such cancellation is agreed by Atlas Copco in writing.
- (c) If the buyer shall fail to give Atlas Copco proper delivery or transportation instructions when required or to accept delivery of the goods when tendered in accordance with the terms of the contract, the buyer shall be liable for all storage and other costs incurred by Atlas Copco as the result of such failure which shall be immediately due and payable on demand, but such liability shall not affect the buyer's obligation to purchase the goods and the right of Atlas Copco to damages for breach of such obligation.
- (d) In the event that the goods are delivered at a time and place agreed with the buyer but no representative of the buyer is present when the goods are so delivered Atlas Copco reserves the right to deposit such goods at the specified place and shall have no liability in respect of loss or damage resulting therefrom.

8 Damage in Transit

- (a) Atlas Copco shall have no liability in respect of goods lost or damaged in transit unless such loss or damage shall occur prior to delivery and
 - (i) in the case of a whole consignment failing to arrive, the buyer gives notice in writing to Atlas Copco within 14 days of receipt of Atlas Copco's invoice or despatch note, or
 - (ii) in any other case, the buyer gives notice in writing to Atlas Copco within seven days of the receipt of the goods or such longer period as may be stated in the contract.
- (b) Subject to paragraph (a), Atlas Copco's liability in respect of goods lost in transit shall be limited to replacing such goods and its liability in respect of goods damaged in transit shall be determined in accordance with clauses 9 and 11.

9 Acceptance

- (a) The buyer shall not be entitled to reject the goods unless:
 - (i) within 14 days after delivery or such longer period as may be stated in the contract, the buyer shall have given notice, in writing, to Atlas Copco that the goods are defective,
 - (ii) the buyer shall have provided Atlas Copco with such access to the goods as it requires and Atlas Copco shall have failed to remedy the defect within 14 days after receipt of the buyer's notice or such longer period as may be stated in the contract,
 - (iii) the defect materially affects the performance of the goods, and
 - (iv) the defect is covered by Atlas Copco's guarantee in clause 11.
- (b) In the event of the buyer rejecting the goods, Atlas Copco shall have no liability to the buyer except for payment of any liquidated damages agreed in the contract terms and the return of any payments made by the buyer to Atlas Copco in respect of the purchase of the goods.

10 Title and Risk

- (a) Title to the goods shall remain in Atlas Copco until payment in full is made by the buyer for all sums due from it to Atlas Copco on any account whatsoever.
- (b) Paragraph (a) of this clause shall not prevent the buyer from embodying the goods in any product so long as they remain identifiable or from selling the goods or any product embodying the goods but, in the event of such sale (to the extent of the buyer's indebtedness to Atlas Copco in respect of the goods) the buyer:
 - (i) shall hold the proceeds of sale or the right to receive the same on trust for Atlas Copco,
 - (ii) shall place the proceeds of sale in a separate account of the buyer in such a way as to be identifiable as in the beneficial ownership of Atlas Copco, and
 - (iii) at Atlas Copco's request, shall assign the right to receive the proceeds of sale to Atlas Copco.
- (c) In the event of the buyer suffering any distress or execution to be levied against him or entering into any arrangement with its creditors or (being an individual) becoming subject to the bankruptcy laws or (being a company) entering into liquidation otherwise than for the purposes of amalgamation or reconstruction or having a receiver appointed of the whole or any part of its assets, Atlas Copco without prejudice to its other rights under these conditions shall be entitled to enter upon any land or premises where the goods or any product embodying the goods may be for the time being, to detach the goods if so embodied and to recover possession of them.
- (d) The risk in the goods shall pass to the buyer on delivery.

11 Guarantee and Limitation of Liability

- (a) The provisions of this clause shall apply except insofar as any statute or regulation shall provide to the contrary and shall not affect the statutory rights of any consumer.
- (b) Subject to clauses 8(a) and 9, Atlas Copco shall, at its option, repair, replace or credit the buyer with the whole or a due proportion of the purchase price of any goods supplied to it by Atlas Copco in respect of which any defect shall arise due to faulty materials or workmanship, provided that:
 - (i) the defect becomes apparent within 12 months from the date of delivery,
 - (ii) the buyer gives notice of the defect to Atlas Copco in writing within 14 days after the defect becomes apparent,
 - (iii) the defect is not attributable to misuse, failure to comply with Atlas Copco's instructions regarding storage, operation or maintenance, damage caused by any factors beyond Atlas Copco's control, or fair wear and tear,
 - (iv) the goods have not been repaired or altered without Atlas Copco's written approval, and
 - (v) the buyer provides Atlas Copco with such access to the goods as it requires or, at Atlas Copco's request, returns the goods to Atlas Copco for inspection.
- (c) Atlas Copco shall have no liability to the buyer for any information or advice given to the buyer in connection with the goods, unless confirmed in the contract.
- (d) Except as provided in clauses 8, 9 and 11, Atlas Copco shall have no liability to the buyer in respect of any defect in the goods, and all conditions and warranties, whether express or implied, as to the quality of the goods, their fitness for any particular purpose, or their design, manufacture, materials, components, specification and performance are excluded. Further, Atlas Copco shall have no liability for any loss of production, loss of profit, loss of use, loss of contracts or any other consequential, economic or indirect loss whatsoever suffered by the buyer as a result of any defect in the goods.
- (e) Atlas Copco shall have no liability to any third party for any injury, damage or loss caused directly or indirectly by the goods, whether as a result of their operation or use or otherwise and whether as a result of any defect therein or otherwise, and the buyer shall indemnify Atlas Copco against any claim arising from any such injury, damage or loss

12 Data monitoring system

The equipment may include a data monitoring system and service called SMARTLINK. The data received through the system by Atlas Copco is inter alia used by Atlas Copco and its third party distributors or contractors for the purpose of overall customer service. Atlas Copco will use commercially reasonable efforts to protect the data retrieved from unauthorized use. The SMARTLINK service is provided "as is" without any other warranty provided, express or implied. The use of the SMARTLINK service is entirely at Purchaser's risk. Atlas Copco reserves the right, in its sole discretion, to make necessary unscheduled deployments of changes, updates or enhancements to the SMARTLINK services at any time. Atlas Copco may add or remove functionalities or features, and may suspend or stop the SMARTLINK service altogether for any reason. Atlas Copco does not give any guarantee or warranty that the SMARTLINK service will be 100% active all the time and will not be liable in case of any downtime. More information on SMARTLINK can be found on www.atlascopco.com/smartlink