

Atlas Copco (NZ) Limited, Private Bag 92814, Penrose, Auckland 1135 Ph: (09) 579 4069 Fax: (09) 525 2006

Business Type:  Private Company  Sole Trader  Partnership  Trust  Public Company**If Company:**

Legal Name Entity: \_\_\_\_\_

Trading As: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Delivery Address: \_\_\_\_\_

Registered Office: \_\_\_\_\_ Year Incorporated: \_\_\_\_\_

Company Number: \_\_\_\_\_ Paid Up Capital: \_\_\_\_\_

Nature of Business: \_\_\_\_\_

Required Credit Limit: \_\_\_\_\_ GST Number: \_\_\_\_\_

**Name of directors/Proprietors/Partners (All Applicants must complete)**

Full Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

Full Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

**Contact Names**

Accounts Payable: \_\_\_\_\_ Telephone: \_\_\_\_\_

Email Contact: \_\_\_\_\_ Fax: \_\_\_\_\_

Postal Address for Accounts: \_\_\_\_\_

**Trade References**

1) \_\_\_\_\_ Telephone: \_\_\_\_\_

2) \_\_\_\_\_ Telephone: \_\_\_\_\_

3) \_\_\_\_\_ Telephone: \_\_\_\_\_

The Customer authorises Atlas Copco (NZ) Limited to collect, retain and use any information about the Customer, for the purposes of assessing the Customer's credit-worthiness, enforcing any rights under the terms and conditions of sale, or marketing any goods and services provided by Atlas Copco (NZ) Limited. The Customer authorises Atlas Copco (NZ) Limited to disclose any information obtained in relation to the Customer to any person for any of the purposes set out above. The Customer authorises any person to provide to Atlas Copco (NZ) Limited such information as Atlas Copco (NZ) Limited may require in response to its credit enquires or its provision of credit to the customer. Where the Customer is an individual these authorities and consents are for the purposes of the Privacy Act 1993. Under the Privacy Act 1993, the Customer (if an individual) has rights of access to and correction of information held by Atlas Copco (NZ) Limited.

Signed in Agreement: \_\_\_\_\_ Date: \_\_\_\_\_

Full name of Signatory: \_\_\_\_\_ Designation: \_\_\_\_\_

**OFFICE USE**

Sales Person : \_\_\_\_\_ Global Cust Code: \_\_\_\_\_ AC Segment Code : \_\_\_\_\_

Sales Channel Code : \_\_\_\_\_ Global Industry Code : \_\_\_\_\_ Country Code : \_\_\_\_\_

Approved/declined(Date) \_\_\_\_\_

Account Number: \_\_\_\_\_

Credit Controller: \_\_\_\_\_

**TERMS AND CONDITIONS OF SALE**

UNLESS OTHERWISE AGREED BY THE COMPANY IN WRITING, THE FOLLOWING TERMS AND CONDITIONS APPLY TO THE COMPANY'S QUOTATIONS AND ACCEPTANCES OF ORDERS:

**1 General**

- (a) The "Company" means Atlas Copco (NZ) Limited.
- (b) The "Customer" means the applicant(s) under these Terms and Conditions. If there is more than one Customer, these Terms and Conditions will bind each Customer jointly and severally.
- (c) The "Goods" means all machinery, equipment, spare parts and other products supplied by the Company and, in respect of each order of Goods from the Customer accepted by the Company, means the Goods described in the Invoice issued by the Company in respect of the relevant order.
- (d) "PPSA" means the Personal Property Securities Act 1999.
- (e) In the event of any conflict, these terms and conditions (together with any terms and conditions agreed in writing by the Company and the Customer) will prevail over any other document including (but not limited to) any invoices.
- (f) The Customer is to execute documents and do such further acts as may be required by the Company to register the security interest granted to the Company under these terms and conditions under the PPSA or for any other purpose whatsoever.

**2 Delivery**

Goods quoted "ex stock" are offered subject to availability at the time an order is placed. Orders for Goods are accepted on date of order subject to any necessary import license being available. Indent delivery times are subject to confirmation by the Company at time of order. If the Company is prevented from or delayed in delivering any goods within the time stipulated for delivery for any reason or cause beyond its control, then the time for delivery will be extended by the period during which such prevention or delay operated. Delivery to the Customer occurs when the goods are dispatched from the Company's Delivery Point.

**3 Delivery Point**

All goods are dispatched "Ex Warehouse", Mt Wellington, Auckland, Freight costs to customers account.

**4 Risk**

From the time the Goods are dispatched by the Company to the Customer the risk of any loss or damage to, or deterioration of, those Goods from whatever cause will be and is borne by the Customer. The Customer is solely responsible for arranging insurance for Goods dispatched by the Company.

**5 Prices**

All prices quoted for Goods or services are subject to the application of clause 7. Prices quoted for Goods ex stock are fixed. All other prices quoted are based on the Company's prices at date of quotation but are subject to alteration (in the Company's sole discretion) prior to invoicing as a result of any variation in exchange rates, customs duties, sales tax, other governmental imports, freight charges, or insurance rates which may occur between the dates of quotation and delivery. Any variation resulting in an increase in price shall be borne by the Customer.

**6 Payment**

Where the purchase price of Goods or services ordered is less than \$25.00, the purchase price must be paid in cash. The Company may at its sole discretion agree in writing to grant or withdraw (as the case may be) credit to the Customer for the payment of the purchase price(s) or Goods or services in accordance with these Terms and Conditions. Otherwise, the purchase price(s) of all Goods sold or services provided must be paid in full in cash on delivery. If credit is granted payment is due:-

- (a) within 7 days from the date of the Company invoice for all machine sales and installation costs; and
- (b) by the 20<sup>th</sup> of the month following date of invoice for all other Goods and services.
- The Company reserves the right to charge interest at the rate of 2% per month on any overdue amounts included in the balance outstanding at the start of the month. Credit facilities may be withdrawn by the Company at any time without prior notice. The customer agrees to indemnify and keep indemnified the Company against any costs incurred by the Company in connection to legal fees on an indemnity basis and debt collection agency fees.

**7 Goods and Services Tax**

Prices quoted do not (unless otherwise indicated) include Goods and Services Tax which will be added where applicable.

**8 Validity**

Unless previously withdrawn by the Company all quotations provided by the Company remain open for acceptance by the Customer for a period of 30 days from the date of quotation. Thereafter, all quotations are subject to the Company's confirmation.

**9 Transfer of Property in Goods Supplied to Customers**

- (a) Property in all Goods supplied to the Customer remains with the Company until payment in full of the purchase price is received by the Company.
- (b) Until such payment is received the Customer is only the bailee of the Goods supplied to it and the Customer agrees to:
- accept possession of the Goods supplied to it as the bailee of the Company;
  - keep the Goods supplied to it in such a manner which enables them or it (as the case may be) to be readily identifiable as the property of the Company; and
  - maintain the Goods supplied in good order and condition and to return the Goods immediately to the Company if called upon to do so.
- (c) If payment is not received by the due date stipulated for payment in clause 6 and the Customer has not returned the Goods, after demand, the Company's employees or agents may enter into the Customer's premises at any reasonable time to recover possession of the Goods supplied without liability for any damage which may be caused.
- (d) Until ownership of the Goods passes, the Customer:
- waives its right under the PPSA to:
    - receive a copy of any verification statement;
    - receive a copy of any financing change statement;
    - receive any notice that the Company intends to sell the Goods or to retain the Goods on enforcement of the security interest (as defined in PPSA) granted to the Company under these terms;
    - object to the Company's proposal to retain the Goods in satisfaction of any obligation owed by the Customer to the Company;
    - receive a statement of account on sale of the Goods;
    - redeem the Goods; and
    - where any Good becomes an accession, as defined in the PPSA, receive notice of removal of the accession, apply to the court for an order concerning the removal of the accession and not have any goods damaged when the Company removes the accession;
  - must not give the Company a written demand or allow any other person to give the Company a written demand requiring the Company to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under PPSA.
- (e) The Customer acknowledges that it has received value as at the date of the first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to the Company under these terms.

**10 Goods Returned for Credit**

- (a) Goods will only be accepted for credit by prior agreement with the Company, or to the extent that they have been incorrectly supplied.
- (b) Returned Goods must be delivered freight prepaid to the Company, and must be received by the Company in original condition.
- (c) A restocking fee of 20% (GST exclusive) of invoice value will be charged for all returned Goods, with a minimum fee of \$20 (GST exclusive), unless Goods have been incorrectly supplied.
- (d) Goods made to special order or purchased specifically for a Customer cannot be returned or credited unless those Goods are not to specifications or otherwise not in accordance with any express or implied term of the contract.

**11 Shortages in Delivery**

The Company will only accept claims for short delivery if it is notified in writing within ten (10) days of the delivery of the Goods.

**12 Guarantee**

- (a) New Atlas Copco equipment is guaranteed for a period of twelve months. For spare parts the guarantee period is three months and for service labour the guarantee period is one month. For all of the three categories above, the guarantee period commences from the time of delivery to the customer. It is a condition precedent of this guarantee that the customer must notify the Company in writing of any defect in or damage to the Goods or deficiency in the Services within the guarantee period stipulated above. This guarantee applies to new Goods only and is void if non genuine parts are used, if maintenance is outside the Company's guidelines or if the Goods are used outside quoted design specifications. For the avoidance of doubt, this guarantee cannot be transferred to any other party.
- (b) The Company's entire liability under this guarantee is, at its option, to repair or replace the Goods or to provide the Services again (as the case may be), which are found (in the case of Goods) to be defective or damaged as a result of the Company's defective workmanship, materials or design (fair wear and tear excepted) or (in the case of Services) to be defective following inspection by the Company or its agents. The Company is not obliged to provide substitute Goods while the original Goods are inoperable other than to the extent expressly required by law.
- (c) All work carried out by the Company on Goods under its guarantee obligations will be carried out at one of the Company's service centers during normal working hours. All Goods must be forwarded freight paid to the service center nominated by the Company and will be returned freight collect to the Customer. If requested, the Company may, at its discretion, comply with its warranty obligations at a Customer's site, but the Customer is responsible for all costs incurred by the Company in respect of such working including, without limitation, travelling time, service vehicle costs, accommodation and penal costs for all call outs and overtime. Where replacement parts are not available from the Company's stock, such parts will be freighted by surface freight at the Company's cost. The Company, will, if requested by a Customer, freight replacement parts by air freight but the Customer is responsible for all additional freight costs incurred.
- (d) The Company is not liable in contract, tort or otherwise for any loss, injury, cost or damages (whether direct or indirect) arising out of the supply, operation or use of any defective or damaged Goods or deficient services installed or provided by the Company. The Company accepts no liability for defective or damaged equipment or materials supplied to it for resale by others, either as individual parts or following incorporation in Goods supplied by the Company and such defective equipment or materials are subject to the relevant maker's warranty only.
- (e) The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods from the Company for the purposes of business in terms of sections 2 and 43 of the Consumer Guarantees Act. All warranties, conditions, liabilities or representations in relation to the Goods or Services (including warranties in respect of faults, defects, the condition, quality, suitability and fitness of the Goods) whether expressed or implied, whether statutory or otherwise are expressly excluded to the fullest extent permitted by law.
- (f) To the extent that the provisions of the Contractual Remedies Act 1979 may apply to these Terms and Conditions in relation to Goods and services sections 6 - 10 inclusive of the Act are hereby expressly excluded and if any liability of whatever nature is established by the Customer against the Company in any way whatsoever the Customer's sole and exclusive remedy shall be limited to those remedies provided in these Terms and Conditions PROVIDED HOWEVER that where these Terms and Conditions do not provide a remedy for misrepresentation or repudiation or breach of contract or for any of the other matters to which sections 6 - 10 inclusive relate the sole remedy of the Customer shall be damages and such damages shall be limited to \$1,000 or the Customer's loss whichever is the lesser.

Applicants Signature:.....