

Atlas Copco New Zealand Standard Terms and Conditions

1. GENERAL

(a) These Terms and Conditions (**Agreement**) apply to products (**Products**) and to services (**Services**) that Atlas Copco (N.Z.) Ltd (NZCN 8240) (**us, our and we**) supply to the purchaser (**you**).

IMPORTANT INFORMATION ABOUT YOUR STATUTORY RIGHTS

(b) Nothing in this Agreement (including clauses 6, 7 and 8) affects any non-excludable statutory rights or remedies that you may have including, without limitation, under the Consumer Guarantees Act 1993 (**CGA**) and the Fair Trading Act 1986 (**FTA**) (except to the extent permitted by those Acts).

(c) You agree that: (i) if the Products or Services are supplied to and acquired by you in trade for the purposes of a business, the CGA does not apply; (ii) you do not rely on the representations or other conduct of us or our employees or agents, and that you and we expressly contract out of the FTA to the maximum extent possible; and (iii) it is fair and reasonable that the parties are bound by this clause.

(d) We comply with the Privacy Act 1993 and the Privacy Principles set out in that Act. We may collect and use personal information for supplying Products or Services, for debt collection, for enforcing any rights under this Agreement, and to provide you with information about products or services we think might be of interest to you. You have the right to access and request correction of any personal information we hold about you.

2. PRICE AND TAXES

(a) The prices do not include taxes. You must pay all taxes arising from, or relating to, this Agreement. Taxes mean all taxes of any kind other than taxes on our income.

(b) Without limiting clause (a), you must pay to us an amount equal to any goods or services tax that applies to a supply. We will provide you with a tax invoice.

3. DELIVERY AND CHANGES

(a) We will provide the Products and Services by the dates agreed in writing with you.

(b) You must inspect Products on delivery and notify us of any short delivery or transport damage within 5 days after receiving the delivery. Notification does not make us liable for short delivery or damage or oblige us to provide additional or replacement Products.

(c) You must promptly provide the information, access and co-operation we need to meet our obligations under this Agreement.

(d) Without limiting clause (c), if you need to do something by a certain time and you don't do it, then (without limiting any of our other rights or remedies) the time for us to meet our obligations is extended by any delay that this causes.

(e) You cannot cancel or change an order for a Product or a Service (including, to avoid doubt, a delivery date or any specifications or requirements).

4. PAYMENT TERMS

(a) Account Customers: payment for machines is due 7 days after invoice date. Payment for all other Products, and payment for Services, is due 30 days after invoice date. Non Account Customers: payment is due before delivery of Product or before commencement of Service.

(b) Without limiting any other right or remedy, we may charge you daily interest, at 1.5% per month, on overdue amounts. If we charge interest, then you must pay it within 7 days after we request payment.

5. TITLE AND RISK, INSURANCE & REPOSSESSION

(a) Title to a Product only passes to you when we have been paid in full. Prior to that, you are a bailee only and you do not get any form of interest in the Product (whether legal, equitable or otherwise). Risk in a Product passes to you when we provide it to a carrier, deliver it to a place you nominate or receive payment in full (whichever occurs first). We do not have to give any form of notice that risk or title has passed.

(b) We are not required to have any insurance for Products or Services (including transit, theft, liability or damage insurance).

(c) If you have a Product and title has not passed to you, then: (i) you must store the Product separately and ensure that it is clearly marked as our property; and (ii) you irrevocably authorise us to enter any premises and take possession of and remove the Products if you are (or are about to become) insolvent or subject to any form of administration or insolvency process of any kind (whether voluntary or involuntary). To avoid doubt, doing any of these things does not affect your liability under this Agreement (including your liability if a Product is lost, damaged or stolen or seized).

6. REFUNDS, EXCHANGES AND RETURNS

Unless otherwise agreed in writing, and subject to clause 1 (b), we do not provide refunds, or exchange or accept the return of Products

7. WARRANTY

The current version of the Atlas Copco (N.Z.) Products and Services Warranty is incorporated into this Agreement (a copy is available at any time on request).

8. LIABILITY

To the maximum extent permitted by law and subject to clause 1 (b):

(a) we exclude all implied terms (statutory or otherwise - including implied warranties) of any kind. The United Nations Convention on Contracts for the International Sale of Goods does not apply;

(b) we exclude all liability for indirect and consequential loss or damage of any kind. Without limiting what is or is not indirect or consequential loss, the parties agree that the following are taken to be indirect or consequential losses: (i) loss of revenue of any kind and loss of profits of any kind; (ii) failure to realise expected profits or savings of any kind; (iii) additional or wasted costs; (iv) down time or lost production costs; and (v) any other types of losses, of any kind, that are similar to any of the losses described in (i) – (iv);

(c) our total liability for loss or damage of any kind not excluded by other provisions in this Agreement is limited in aggregate for any and all claims: (i) arising from or relating to a Product: to the price of the Product; and (ii) arising from or relating to a Service: to the price of the Service;

(d) our liability is reduced to the extent that it was caused or contributed to by an act or omission by you or by any of your personnel (including subcontractors or agents);

(e) clauses (a) – (d) apply to loss or damage of any kind (direct, indirect or otherwise), however caused, whether in contract, tort (including negligence), under any statute or otherwise, arising from or related in any way to this Agreement (including arising from or related in any way to the Products or the Services); and

(f) if a statute implies a term into this Agreement, and it cannot be excluded, then our liability for breaching it will be limited (at our option) to: (i) for goods: repair, replacement with equivalents or paying the cost of such repair or replacement; and (ii) for services: resupply or paying the cost of resupply. We may choose not to limit our liability in any of these ways.

9. FORCE MAJEURE

We will not be in breach of this Agreement if the breach is caused by an event beyond our reasonable control. Without limitation, the following are taken to be events beyond our reasonable control: any form of industrial action, riots, acts of war or terrorism, fires, floods, storms, breakdowns, natural disasters, Acts of God, scarcity, unavailability or delay in obtaining transportation or materials (including deliveries from subcontractors), power restrictions and changes to laws whether any of these things affect us, our suppliers or our Related Bodies Corporate) and whether they occur within or outside Australia.

10. CONFIDENTIAL INFORMATION & INTELLECTUAL PROPERTY

- (a) A party must keep the other party's confidential information confidential and only disclose or use it to meet its obligations under this Agreement. We may disclose confidential information to our Related Bodies Corporate.
- (b) Before a party discloses any confidential information to a third party, they must tell them that it is the other party's confidential information and that it must only be used to assist the disclosing party to meet its obligations under this Agreement.
- (c) If we give you any material or information of any kind (including manuals and maintenance procedures) (**Our Material**), you can only use it for the purposes of this Agreement. We reserve all other rights in it.
- (d) Without limiting clause (c), you must not use (or allow anyone else, including a service provider, to use) any of Our Material to: (i) work on any of our products (including to perform maintenance) other than where the work is permitted by clause (e) below; or (ii) create a document (including a maintenance schedule or a repair manual).
- (e) You may use documents that we provide with a Product to perform maintenance or repair work on that Product.

11. CUSTOMER TERMS

None of your terms will apply to or affect this Agreement in any way. This applies even if we accept the terms or they are deemed to have been accepted by us if we do a particular thing (eg provide goods or services, accept an order, accept payment and so on) and we do it.

12. PPSA

- (a) You acknowledge and agree that: (i) this Agreement is a security agreement, and creates a continuing purchase money security interest in our favour in all present and future Products supplied to you (**Security Interest**), in accordance with the Personal Property Securities Act 1999 (**PPSA**); (ii) value has been given to you for the Security Interest or you have done an act by which it has arisen; (iii) we may register a financing statement for the Security Interest; (iv) you waive your right to receive a verification statement (v) the provisions of Part 9 of the PPSA which are for your benefit or place obligations of us will apply only to the extent they are mandatory or we agree to their application.
- (b) You: (i) must not do (or fail to do) anything which could (or does) interfere with (or affect) a security interest of ours (including a right to enforce or register one); (ii) must assist us in registering, perfecting, enforcing or otherwise dealing with a security interest of ours or any of our other rights; and (iii) must (if you breach this clause 12(b)) comply with our instructions as to the treatment of any goods provided under this Agreement (including procuring access to third party premises).
- (c) Each of clauses 12(a)(i)-(v) and 12(b)(i)-(iii) are severable without affecting the others in any way. This clause 12 does not affect any other security interests or limit our rights or remedies under the PPSA.

13. COMPLETE AGREEMENT & THIRD PARTY RIGHTS

- (a) This is the entire agreement between the parties in relation to its subject matter and supersedes all prior agreements, arrangements, correspondence and discussions of any kind relating to its subject matter. This Agreement may be updated by us at any time with written notice to you, and any changes will apply to orders placed by you after the notice date.
- (b) This Agreement does not confer any rights or benefits upon any third parties and any such rights or benefits are excluded. To avoid doubt, this exclusion applies to rights or benefits of any kind, however arising, including under any form of third party beneficiary law.

14. ASSIGNMENT

You may not deal with (including, to avoid doubt, assign) any of your rights or obligations under this Agreement without our prior written consent and any dealing without that prior written consent is void and of no effect. A change in your control or beneficial ownership will be deemed to be an assignment.

15. ENFORCEMENT OF AGREEMENT & GOVERNING LAW

- (a) This Agreement is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- (b) Our failure to enforce any term of this Agreement will not be construed as a waiver of any of our rights.

Applicants Signature:.....