

## TERMS AND CONDITIONS OF SALE

### 1. INTERPRETATION

#### 1.1 In these Conditions the following expressions have the following meanings:

“**Atlas Copco**” means Atlas Copco Limited including its trading divisions Atlas Copco Tools, Atlas Copco Compressors and Atlas Copco Construction & Mining;

“**Atlas Copco Materials**” means any documents or other materials, and any data or other information provided by Atlas Copco relating to the Products;

“**Buyer**” means the person, firm or company from, or on behalf of, whom an order to supply Products is received by Atlas Copco;

“**Buyer Materials**” means any documents or other materials and any data or other information provided by the Buyer to Atlas Copco in connection with the Contract;

“**Conditions**” means the standard terms and conditions of sale set out in this document;

“**Contract**” means any contract between Atlas Copco and the Buyer for the sale and purchase of Products;

“**Group Company**” means in relation to a company, that company, its subsidiaries, its holding company and any subsidiary of such holding company (each as defined in the Companies Act 2006) from time to time;

“**Insolvency Event**” means a party suspending, or threatening to suspend, payment of its debts or being unable to pay its debts within the meaning of section 123 of the Insolvency Act 1996; entering into or applying for (or calling meetings of members or creditors with a view to) one or more of a moratorium, winding up, administration, liquidation (of any kind, including provisional), or composition or arrangement with creditors; or having any of its property subjected to one or more of the appointment of a receiver (of any kind), enforcement of security, distress, or execution of a judgement (in each case to include similar events under the laws of other countries);

“**Intellectual Property Rights**” means all patents, copyright, trade marks, service marks, rights in trade dress or get-up, rights in goodwill or to sue for passing off, rights in designs, database rights, topography rights and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world; and

“**Products**” means any products supplied or agreed to be supplied to the Buyer by Atlas Copco.

#### 1.2 In these Conditions a reference to one gender shall include reference to the other genders; words denoting a singular number include the plural and vice versa; references to persons shall include firms, companies and other organisations; reference to a statutory provision includes a reference to the same as modified, re-enacted or both from time to time and any subordinate legislation made under it; headings shall not affect the interpretation of these Conditions; and words such as “include” and “including” are to be construed as if they were followed by the words "without limitation".

## **2. CONTRACT FORMATION**

- 2.1 These Conditions shall form part of every contract of sale entered into by Atlas Copco and any purported variation or exclusion shall be of no effect unless accepted in writing by Atlas Copco.
- 2.2 Each order for Products by the Buyer shall be deemed to be an offer by the Buyer to purchase those Products subject to these Conditions. An order placed by the Buyer shall not be binding on Atlas Copco until Atlas Copco issues an order acknowledgement or, if earlier, delivers the Products to the Buyer at which point a Contract shall be formed comprising these Conditions, Atlas Copco's quotation and any other documents which are incorporated by reference in Atlas Copco's quotation.
- 2.3 Only Products specified in Atlas Copco's order acknowledgement or otherwise delivered to the Buyer are included in the scope of the Contract.
- 2.4 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract.
- 2.5 If the order relates to a quotation of Atlas Copco then the order shall reference the quotation clearly and the quotation shall form part of the Contract.
- 2.6 The Buyer shall be responsible for ascertaining whether the capacity and performance of the Products are sufficient and suitable for its intended use and acknowledges that Atlas Copco, in providing information or opinion regarding the Products, is in no way acting as advisor to the Buyer in respect of the merits of using the Products to achieve any particular purpose.

## **3. SPECIFICATION OF THE PRODUCTS**

- 3.1 The description of the Products shall be as set out in Atlas Copco's quotation (or other document(s) incorporated by reference in Atlas Copco's quotation) or, in the absence of a formal quotation, Atlas Copco's catalogue or as otherwise notified to the Buyer in writing by Atlas Copco.
- 3.2 All drawings, descriptions and specifications supplied by or on behalf of Atlas Copco are approximate only unless otherwise expressly stated.

## **4. PRICE AND PAYMENT**

- 4.1 All prices quoted for Products by Atlas Copco are exclusive of packaging and carriage costs and other expenses and tax (including VAT) unless agreed otherwise in writing by Atlas Copco.
- 4.2 Atlas Copco's prices are subject to alteration without notice. Unless agreed otherwise by the parties in writing, Products will be sold at the prices applicable at the date of order acknowledgement.
- 4.3 Payment of invoices is due within 30 days from the date of invoice.
- 4.4 In the event that the Customer fails to pay an invoice by its due date, Atlas Copco shall be entitled to charge interest on any outstanding balance at the annual rate of 5% above the base lending rate of Barclays Bank Plc, accruing on a daily basis and being compounded monthly until payment is made, whether before or after any judgment. During such period of default, or if Atlas Copco reasonably forms the belief that payment will not be made by the due date, Atlas Copco shall be entitled to withhold deliveries of Products (whether

ordered under the same or a different Contract), without prejudice to its right to receive payment in respect of such Products.

4.5 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount or abatement.

## 5. DELIVERY

5.1 Unless otherwise agreed, the Products shall be sold ex-works and the place for delivery shall be Atlas Copco's premises, as notified to the Buyer.

5.2 Any dates specified by Atlas Copco for delivery of the Products are intended to be an estimate only and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

5.3 Atlas Copco will not be liable for any losses (including loss of revenue), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products nor will any delay entitle the Buyer to terminate or rescind the Contract.

5.4 If the Contract includes payment by way of liquidated damages for late delivery, payment of such liquidated damages shall be the Buyer's exclusive remedy in respect of such late delivery.

5.5 If for any reason the Buyer does not accept delivery of any of the Products when they are ready for delivery, or Atlas Copco is unable to deliver the Products on time because of any act, omission, failure or default of the Buyer or its agents, consultants and contractors:

5.5.1 the Products will be deemed to have been delivered and risk in the Products will pass to the Buyer; and

5.5.2 Atlas Copco may, at its discretion, either: (a) store the Products until delivery, whereupon the Buyer will be liable on demand for all related costs and expenses (including storage and insurance); or (b) Atlas Copco may deposit such Products at the agreed delivery location and shall have no liability in respect of any resulting loss or damage.

5.6 The Buyer will provide at its expense at the delivery location adequate and appropriate equipment and manual labour for loading or unloading, as the case may be, the Products.

5.7 The Buyer shall inspect the Products within 14 days of delivery and shall notify Atlas Copco within 21 days of delivery if there are any defects in the Products including those which may have arisen as a result of damage in transit. Where the Contract provides for delivery of the Products to take place at the Buyer's premises, the Buyer shall notify Atlas Copco in writing in the event that the Products do not arrive within 14 days of their agreed or reasonably anticipated delivery date.

## 6. TITLE AND RISK

6.1 Title in the Products shall not pass to the Buyer until Atlas Copco has received payment in full in cleared funds in respect of:

6.1.1 the Products; and

6.1.2 all other sums which are or may become due to Atlas Copco from the Buyer on any account.

- 6.2 Risk in the Products shall pass to the Buyer on delivery or deemed delivery.
- 6.3 Until title in the Products passes to the Buyer, the Buyer shall:
  - 6.3.1 not cause, or allow to be caused, any detriment to them;
  - 6.3.2 store the Products separately from all other goods held by the Buyer so that they remain readily identifiable as Atlas Copco's property; and
  - 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Products.
- 6.4 In the event that Buyer experiences an Insolvency Event, the Buyer's right to possession of the Products shall terminate immediately and Atlas Copco may recover possession of the Products. The Buyer grants Atlas Copco an irrevocable licence at any time to enter any of the Buyer's premises where Atlas Copco believes the Products may be stored in order to recover possession of them.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 Notwithstanding Condition 6.1, the parties agree that all Intellectual Property Rights in the Products and all their constituent parts (including any software) and any related materials shall be the property of and remain with Atlas Copco or its licensors.
- 7.2 Atlas Copco grants the Buyer and its third party agents and contractors a non-exclusive licence to use any Intellectual Property Rights in the Products and related materials solely to the extent necessary for the use of the Products for the purposes intended by Atlas Copco.
- 7.3 The Buyer shall not (and shall ensure that no third party to whom it makes available the Products shall) access, copy, adapt, reverse engineer, decompile, disassemble or modify any software incorporated in the Products without the prior written consent of Atlas Copco.

## **8. CANCELLATION**

- 8.1 In the event that the Buyer wishes to cancel an order after Atlas Copco has issued an order acknowledgement, the Buyer shall notify Atlas Copco in writing. Atlas Copco shall give due consideration to such a request (taking in to account the likelihood of achieving a replacement sale and, in respect of parts, the reusability of these for the manufacture of other products) and will respond to the Buyer, informing it:
  - 8.1.1 whether or not it is willing to cancel the order; and
  - 8.1.2 if cancellation is permitted by Atlas Copco in accordance with Condition 8.1.1, the amount of the price of the cancelled Products that will remain payable by the Buyer notwithstanding such cancellation.
- 8.2 Any Products cancelled in accordance with Condition 8.1 will be subject to a handling charge and must be forwarded to Atlas Copco's head office in Hemel Hempstead at the Buyer's expense, unless Atlas Copco notifies the Buyer otherwise in writing.
- 8.3 For the avoidance of doubt if Atlas Copco does not permit cancellation of the order (whether in whole or part) in accordance with Condition 8.1, the Buyer shall remain responsible for payment of the full price of the Products ordered.

## 9. QUALITY AND LIABILITY

- 9.1 Unless stated otherwise in Atlas Copco's quotation for the Products, Atlas Copco warrants that (subject to the other provisions of these Conditions) upon delivery and for a period of 12 months from the date of delivery, the Products will:
- 9.1.1 be of satisfactory quality; and
  - 9.1.2 materially be in accordance with Atlas Copco's quotation, if any.
- 9.2 All warranties, conditions and other terms implied by law, custom or course of dealing are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3 No provision of the Contract (including these Conditions) shall exclude or limit Atlas Copco's liability for death or personal injury caused by its negligence or for fraud or fraudulent misrepresentation or any liability that may not be limited or excluded by law.
- 9.4 If any of the Products do not conform with the warranty in Condition 9.1, Atlas Copco shall, at its option, repair or replace the Products or credit the Buyer with the whole or a due proportion of the purchase price of such Products, provided that:
- 9.4.1 the defect becomes apparent within 12 months from the date of delivery;
  - 9.4.2 the Buyer gives notice of the defect to Atlas Copco in writing within 14 days after the defect becomes apparent;
  - 9.4.3 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;
  - 9.4.4 the Products have not been repaired or altered without Atlas Copco's written approval; and
  - 9.4.5 the Buyer provides Atlas Copco with such access to the Products and/or any information as it requires or, at Atlas Copco's request, returns the Products to Atlas Copco for inspection.
- 9.5 Subject to Condition 9.3:
- 9.5.1 Atlas Copco's total liability in connection with each of the Buyer's orders shall be limited to the cost of repairing or replacing the affected Products or refunding the purchase price of the affected Products (in each case in accordance with Condition 9.4 above);
  - 9.5.2 Atlas Copco shall not be liable to the Buyer for any loss of revenue and profit, loss of anticipated savings, loss of business, loss of opportunity, depletion of goodwill, additional operational and administrative costs and expenses, the cost of procuring replacement goods or services, any financial losses or any indirect or consequential loss or damage; and
  - 9.5.3 without prejudice to Conditions 9.5.1 and 9.5.2, Atlas Copco's total aggregate liability to the Buyer in connection with the Products shall not exceed 150% of the price paid to Atlas Copco by the Buyer in respect of the Product or Products to which the liability relates.

10. **CONFIDENTIALITY**

10.1 Neither party shall use, copy, adapt, alter, disclose or part with possession of any information or data of or relating to the other party or its Group companies which is disclosed to it or which otherwise comes into its possession and which relates to the business of the other party or its Group companies (**Confidential Information**) except as strictly necessary to perform its obligations or exercise its rights under the Contract provided that this Condition shall not apply to Confidential Information which:

10.1.1 the receiving party is able to prove was already in its possession at the date it was received or obtained or which the receiving party obtains from some other person with good legal title to it or which is independently developed by or for the receiving party; or

10.1.2 comes into the public domain otherwise than through the default or negligence of the receiving party; or

10.1.3 the receiving party is required to disclose pursuant to any applicable laws or the order of any competent court or other regulatory authority.

10.2 Each of the parties shall ensure that its directors, officers, employees, agents and contractors who have, or may have, access to the Confidential Information are bound by a written undertaking of confidentiality in terms no less protective of the Confidential Information than the provisions of this Condition.

10.3 The provisions of this Condition 10 shall continue in force indefinitely notwithstanding termination of the Contract.

11. **ENTIRE AGREEMENT**

11.1 These Conditions and Atlas Copco's quotation (if any) constitute the whole agreement and understanding of the parties in relation to the supply of the Products. Any representations or warranties not contained in these Conditions or Atlas Copco's quotation are hereby expressly excluded.

11.2 The Buyer acknowledges that, in entering into the Contract, it has not relied on and shall have no remedy in connection with any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly stated in Atlas Copco's quotation.

12. **DISPUTE RESOLUTION**

12.1 The parties are committed to resolving all disputes arising under it (whether such dispute arises before or after termination of the Contract) without the need for litigation and to allow as far as possible for commercial relationship between them to remain unaffected by disputes. Therefore:

12.1.1 the parties will attempt in good faith to resolve any dispute or claim promptly through negotiations between respective senior executives of the parties who have authority to settle the same; and

12.1.2 if the matter is not resolved within 15 days from commencement of negotiations, the parties shall attempt to resolve the dispute or claim through mediation with the assistance of a mediator agreed between the parties or, if they are unable to agree as appointed by the Centre for Dispute Resolution upon the request of one of the parties.

- 12.2 If the matter has not been resolved by mediation within two months of the dispute arising, or if either party refuses to participate in a mediation procedure, either of the parties may refer the dispute to the Courts of England and Wales.
- 12.3 Notwithstanding the above, either party may seek the immediate protection or assistance of the Courts of England and Wales if appropriate, particularly in respect of a debt claim.

13. **FORCE MAJEURE**

Notwithstanding the provisions of any other term of the Contract, a party shall not be regarded as in breach of its obligations to the extent that such party is delayed in or prevented from fulfilling its obligations by any circumstances outside its reasonable control (including strikes, lockouts, shortages of materials, delays in transportation or governmental regulations) provided that such party shall have given written notice to the other party of such circumstances within a reasonable time after learning of them. If such circumstances shall continue to prevent or hinder the performance of the Contract by such party for more than three months then the other party may by written notice terminate the Contract with regard to the unperformed portion of it.

14. **LAW AND JURISDICTION**

The Contract shall in all respects be governed by and construed in accordance with English Law and, subject to Condition 12, the parties irrevocably submit to the jurisdiction of the English courts.