ATLAS COPCO INDUSTRIAL ZAMBIA Ltd.

**THE ATTACHED STANDARD TERMS AND CONDITIONS OF SALE WILL APPLY TO THIS PROPOSAL**

THE UNDERMENTIONED TERMS CONDITIONS AND WARRANTIES ARE THOSE WHICH GOVERN THE SALE OF GOODS WHICH MAY BE SOLD BY ATLAS COPCO COMPRESSOR TECHNIQUE AND ATLAS COPCO CONSTRUCTION TECHNIQUE TO A CUSTOMER.

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**1 GENERAL**

In these conditions of Sale:

(a) The company shall mean Atlas Copco Compressor Technique and/or Atlas Copco Construction Technique, a division of Atlas Copco Industrial Zambia Limited, through any or all of its operating Business Areas.

(b) The Customer shall mean the addressee of this document or quotation.

(c) Where appropriate special or additional terms and conditions may be included in writing in the Company’s tender or quotation. Such terms shall, be read as though they were included herein. In the event of any inconsistency between these terms the additional conditions shall prevail.

**2. QUOTATIONS**

Unless otherwise stated in writing, the Company’s tender or quotation will be valid for a period of thirty days from date of issue, after which time acceptance of any order placed is subject to written confirmation.

**3. PRICE**

Unless otherwise stated, all prices are quoted at ex the Company Head Office Kitwe. Where applicable transport costs where the Company is to undertake delivery to the Customer will be added.

**4. TAXES**

Where applicable, VAT at the rates applicable for any period to which the sale and/or service of the goods are attributable will be added to any price payable by the Customer.

**5. DELIVERY**

Availability of stock is as quoted, subject to receipt of prior orders from other customers. Every endeavour will be made to complete delivery within the period stated, but no liability can be accepted in regard thereto. Unless otherwise stated, the Company will not accept cancellation of an order due to late delivery, nor shall it be liable for consequential damages of any kind arising out of late delivery or non-delivery. Delivery may be made in one or more parcels and at different time or by separate shipments or deliveries. Each parcel shall form a separate Contract, delivered and be accepted and paid for accordingly, notwithstanding late delivery or non-delivery of any other parcel.

**6. TERMS OF PAYMENT**

For account customers; Net 30 days from invoice date for equipment. Net 30 days from invoice date for Preventative Maintenance Service Plans. Net 30 days from invoice date for parts and service repairs. For non-account customers terms are net cash on delivery. The Customer agrees to indemnify and keep indemnified the Company against any costs incurred by the Company in connection with the Customer’s failure to pay any money due and owing to the Company including, without limitation, legal fees on an indemnity basis and debt collection agency fees.

**7. PASSING OF TITLE AND RISK, DAMAGE IN TRANSIT AND REPOSSESSION**

7.1 All goods supplied pursuant to these conditions of sale shall be at the Customer’s risk from the time of the first to occur of the following:

(a) the physical delivery of goods to the customer or as directed by the Customer; or

(b) the physical delivery by the Company to a carrier or other bailee where such bailee has been nominated by the Customer or an agent of the Customer.

7.2 The Customer indemnifies the Company against all loss of or damage to the equipment from whatever cause occurring once the goods become the Customer’s risk and the Company is under no obligation to give any statutory or other notice in relation to the passing of risk in the goods to the Customer.

7.3 The ownership in and to the goods supplied pursuant to these conditions of sale shall only pass to the Customer when the purchase price and all other charges in respect thereof have been paid in full. Until then, the Customer shall be the bailee only of all goods delivered by the Company to the Customer.

7.4 So long as the Customer holds goods as bailee only in accordance with this Clause 7, the Customer must store goods supplied by the Company separately and marked in such a manner to show that the goods are clearly identifiable as the property of the Company.

**8. INSURANCE**

The Company will not insure any deliveries arranged by the customer, or by a customer nominated carrier, or other bailee, unless instructed in writing to do so. All insurance charges so incurred will be charged to the Customer.

**9. STRIKES, LOCK-OUTS & OTHER FORCE MAJEURE**

The Company will not be responsible for any loss or damage or delay arising from strikes or lock-outs or form any causes beyond its control including, without being limited to “unavailability or shortage or raw material, riots, fires, floods, breakdowns, Act of God or governments, whether these factors affect the Company or its suppliers and whether occurring within or outside the Republic of South Africa”.

**10. INSPECTION AND CLAIMS FOR A DEFECTIVE DELIVERY**

The Customer is responsible for immediate examination of equipment upon delivery and any deficiency or damage thereof must be reported to the Company in writing within 5 days of its receipt otherwise no claim for such damage or deficiency will be entertained.

**11. RETURN OF THE GOODS**

Prior agreement must be made in writing before the return of any goods. Unless such prior arrangements are made, the Company will not accept any responsibility or liability for goods returned, unless such obligation is implied by law. If credit is required for the goods returned, the Customer must advise the Company of the date, delivery point and document numbers relating to the original delivery and should obtain proof of delivery to the Company. The goods to be returned must be unused, in good order and condition and resalable as new. If goods are returned by the Customer for reasons other than defective delivery or warranty, unless other arrangements are made, the credit allowable will not exceed 80% of the net invoiced value of the goods at date of delivery. Except in the instance of all freight and cartage charges to the Company’s store.

**12. ALTERATIONS AND ADDITIONS**

If after commencement of design, production or manufacture by the Company any specification changes are requested, the cost of such changes will be borne by the Customer and the delivery time as originally advised may be adjusted by the Company.

**13. QUALITY AND TECHNICAL INFORMATION**

Unless otherwise specified in the Company’s quotation or order confirmation, all equipment will be of standard design and manufacture and according to the quoted standards, carefully inspected and where applicable submitted to its standard tests at the works before dispatch Specifications, drawings and particulars of weights and dimensions specified by the Company are to be regarded as approximate only. Descriptions and illustrations contained in catalogues, price lists and other written material are intended merely to present a general idea of the goods described or illustrated therein and they shall not form part of any Contract.

**14. WARRANTY**

The Company’s express warranty is limited to new Atlas Copco equipment and the period of such warranty shall be as follows:-

14.1 In the case of new equipment the warranty shall be for 12 MONTHS from the date of commission with a maximum period of 18 MONTHS from date of dispatch Ex Works from the Company’s factory, whichever comes first.

14.2 In the case of both oil free screw elements and oil injected screw elements the period shall be 24 MONTHS from date of commissioning not to exceed 30 MONTHS from date of dispatch Ex Works from the Company’s factory whichever comes first.

14.3 The warranty is limited to defects resulting from faulty design, materials and workmanship only, fair wear and tear excepted.

14.4 All parts purchased that are claimed to be defective must be returned at the Customer’s risk and freight paid to the Company Head Office Store or other location as authorized.

14.5 This warranty shall be null and void in the event that the equipment is not operated and maintained in accordance with the directions laid down in any operating manual supplied.

14.6 The Company’s express warranty does not cover consequential damages resulting from failure of parts or equipment or subsequent expenses or losses. This warranty is extended by the Company only to the first user of Atlas Copco equipment purchased from the Company or from one of its authorized Distributors and may not be transferred to any other person. All decisions relating to warranty work made by the Company will be binding and final.

14.7 If, during any warranty period the Customer:-

(a) makes any design change to the equipment or;

(b) uses replacement parts other than those authorized by or manufactured by Atlas Copco and supplied by the Company or its authorized Distributors; or

(c) carries out any repairs or replacement using unqualified staff;

This warranty shall, on the happening of any such event, immediately be rendered null and void.

**15. LIMITATION OF LIABILITY IN CONSUMER TRANSACTIONS**

In connection with the supply to a consumer of any goods or services, other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of the Company in the event of a breach of condition or warranty is limited at the option of the Company:-

(a) in the case of goods, to any one or more of the following:

(i) the replacement of the goods or supply of equivalent goods;

(ii) the repair of the goods;

(iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;

(iv) the payment of the cost of having the goods repaired; or

(b) in the case of services:

(i) to the supplying of the services again; or

(ii) to payment of the cost of having the services supplied again.

**16. NO LIABILITY FOR INDIRECT OR CONSEQUENTIAL LOSS**

Except as provided by Clause 15 and in respect to direct losses, the Company shall not be liable to compensate the Customer, its servants, agents or any third parties for contingent, consequential, indirect, special and punitive damages, howsoever caused, to property or injury to person, whether arising out of the use or operation of the equipment or otherwise and whether arising under a breach of warranty, contract, negligence, commission, omission (or advice), tort, strict liability or otherwise and the Customer agrees to indemnify and keep indemnified the Company in respect of such liability.

**17. ENVIRONMENTAL DISCLAIMER**

The Environmental Management at any site on which the Company’s equipment is used is the responsibility of the Customer. In this regard the Company disclaims responsibility for any infringements which occur related to breaches of Acts, Rules or Regulations pertaining to environmental pollution aspects such as noise, atmospheric, water, sewer, dangerous goods, waste disposal, etc.

**18. EXCLUSION OF OTHER TERMS**

The above terms and conditions shall apply to all sales by or quotations given by the Company in respect of any sale and/or services (not including quotations governed by the terms and conditions applicable to Compressor Service Contracts) to the exclusion of any other terms and conditions contained in any document submitted by the Customer to the extent that such last mentioned terms and conditions are inconsistent therewith or with any rights of the Company expressed or implied by law. No modifications thereof shall be binding upon the parties hereto or either of them unless such modifications shall be in writing duly executed by the Customer and approved by the Company.

**19. JURISDICTION**

(a) This agreement is governed by the law applicable in the Republic of Zambia.

(b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the court of the Kitwe/ Zambia.

**20. MEANING OF CONDITIONS OF SALE**

“Conditions of Sales” shall mean “Conditions of Sale and/or Service”

21. It is recorded that the Customer may have entered into a Service Plan Agreement - Total Responsibility or a Service Plan Agreement – Preventative Maintenance. In such event the terms of such afore mentioned plans shall be deemed to be incorporated herein. In the event of there being any conflict or ambiguity between these Standard Terms and Conditions and those contained in such Service Plan Agreement the terms of the relevant Service Plan Agreement shall prevail.

**22 CANCELLATION CLAUSE**

A 5% cancellation fee is due when an order is cancelled. If the cancellation is later than 5 weeks before delivery of the unit, the fee is increased to 15%.

**23 EXCHANGE RATE CLAUSE**

The price on the invoice will be revised (up or down) at time of invoicing, if the exchange variation is deviating more than ±3% in both directions when quoted in ZMW (reference is USD Standard Bank exchange rate at date the quotation is produced)