

STANDARD TERMS AND CONDITIONS OF SALE

1. GENERAL

All Goods and Services are supplied in accordance with these terms and conditions and no variation of or modification of or substitution for these terms and conditions (even though included or referred to in the document from the Customer placing the order) shall be binding on the Company unless specifically accepted by the Company in writing.

2. DURATION OF QUOTATIONS, TENDERS & PRICE LISTS

- (a) The Company reserves the right to withdraw or cancel any quotation or tender that it may have provided to the Customer without notice at any time prior to acceptance of an order by the Customer and quotations and tenders shall be deemed to be withdrawn if not accepted by orders from the Customer within 30 days from the date thereof and thereafter are subject to confirmation at the time of acceptance.
- (b) The Company reserves the right to withdraw or cancel any Price List that it may have provided to the Customer without notice at any time prior to acceptance of an order by the Customer and Price Lists shall be deemed to be withdrawn at the expiry of any Valid To Date noted thereon and thereafter any orders from the Customer are subject to confirmation at the time of acceptance.

3. PRICE VARIATION

- (a) Unless otherwise agreed by the Company, the Company reserves the right to vary the price quoted for the Goods to take account of expenses incurred in or resulting from any modification in design made in accordance with the Customer's request or from delays caused by the Customer's instructions or failure to give any instructions.
- (b) Unless specifically stated or agreed to the contrary all prices quoted are Ex-works and the Customer must bear all carriage insurance and freight charges and the cost of all cases and packaging materials unless the same are returned to the Company's works at the Customer's expense and in good condition within one month of delivery and the Company is advised of such return.
- (c) Import Duty – All prices set out in any quotation, tender or Price List provided by the Company are based upon the rate of Import Duty or other duties or deposit s prevailing at the date thereof and the Company reserves the right to amend such prices in the event of any alteration in the rate of Import Duty.

4. INDEMNITY

The Company shall not be liable for, and the Customer shall indemnify the Company against all actions, claims, liabilities, loss, costs or expenses arising directly or indirectly from the use of the Goods other than in accordance with the Company's operating instructions.

5. ACCEPTANCE

All quotations, tenders or Price Lists provided by the Company to a Customer constitute an offer by the Company to supply the Goods specified in such documents in accordance with these Terms and Conditions of Sale, as amended from time to time, or as otherwise amended in writing by the Company. The acceptance by a Customer of any quotation or tender or the issuing of an order by the Customer to the Company for the supply of Goods set out in such a quotation or tender or Price List constitutes an acceptance by the Customer of the Company's offer to supply Goods in accordance with these Terms and Conditions and will be binding upon both parties from that point, subject to the requirement that any such acceptance by the Customer must be accompanied by sufficient information to enable the Company to proceed with the execution of the order forthwith in default of which the Company shall be at liberty to amend the same to cover any increase in cost which has taken place after acceptance.

6. ERECTION AND INSTALLATION

Subject to reserving the right not to provide a quotation, the Company will if requested quote for the fixing, erection and installation of any Goods supplied to the Customer and such quotation will be subject to these terms and conditions of sale. If the Company does undertake the fixing, erection and installation of any Goods supplied to the Customer, the Customer shall at all times be responsible for the maintenance and the safety of such installations.

7. SPECIFICATIONS, DRAWINGS, ETC.

- (a) All descriptions, dimensions, illustrations, particulars of performance, specifications and statements advertised or submitted to the Customer by the Company are approximate and are not intended to form part of the Contract but are only to present a general description of the Goods and the Company accepts no liability for any error or omission therein.
- (b) Specifications alterations and improvements are continually being made to the various products that the Company sells, and the Company reserves the right to make any reasonable change without notice to material, dimensions or design.
- (c) Drawings and specifications of the Company's products and product information sheets and manuals and catalogues are protected by copyright and design right. No reproduction of these materials is permitted without the express written consent of the Company.
- (d) No licence to reproduce the design of any of the Company's products or parts or components thereof in so far as the same may be protected by patents, copyrights or design rights is conferred by supply of such products under the terms of this agreement and such rights are expressly reserved by the Company.

8. DELIVERY

- (a) Any periods or times quoted for the delivery of Goods or completion of work are to be regarded as estimates and whilst the Company will use its reasonable endeavours to keep to such periods and times the Company gives no guarantee as to its delivery performance nor does it accept any liability whatsoever for loss or damage resulting from any delay in delivery of Goods or completion of work however the same shall have been caused. Delay due to circumstances outside the control of the Company shall not entitle the Customer to cancel any order or to refuse to accept delivery. Delay due to circumstances within the Company's control shall only entitle the Customer to cancel any order if the Customer has informed the Company in writing that time is to be of the essence for that delivery, otherwise time of delivery is not to be considered of the essence of the Contract.
- (b) All Goods are supplied Ex-works, unless agreed between the Company and the Customer by prior arrangement. When the Goods are available for collection, the Company will inform the Customer of this. In the event of the Customer failing to notify the Company of an address for delivery before or within 7 days after the Company has informed the Customer that the Goods are ready for delivery the Goods shall be deemed to be delivered to the Customer at the Company's Works when ready for delivery (or at the expiration of such 7 day period if no such address for delivery has been notified). If the Company retains or stores the Goods the Customer shall be liable to pay such reasonable storage charges as the Company may determine but if the Company is not for any reason able to retain or store the Goods the Company may at the cost and risk of the Customer deliver the same to any warehouse or other place of storage. Notwithstanding any arrangement for storage, payment for the Goods shall be made in accordance with the provision of Condition 9 following.
- (c) For Goods Sold in Quantity the Company will use its reasonable endeavours to ensure that it supplies the quantity of Goods ordered by the Customer and the Customer agrees to accept the supply of such quantity of Goods as reasonably approximates to the stipulated amount of the Customer's order.
- (d) The Company reserves the right to make any delivery against a Customer's order in instalments.

9. PAYMENT AND TITLE

- (a) Risk shall pass on Delivery but legal title to the Goods shall in all cases remain vested in the Company until the Customer shall have paid in full both for such Goods and for all other goods or services supplied by the Company. The property in the Goods will remain vested in the Company until payment has been received in full notwithstanding that the Customer may part with the Goods or with the documents which represent them and the Customer shall, if so requested by the Company in writing, store separately any Goods remaining the property of the Company so that the same may readily be identified.
- (b) If the Customer does part with Goods the title of which remains vested in the Company, the Company will have the right to trace the proceeds of the sale of such Goods and those proceeds will then vest in the Company.
- (c) Once risk has passed to the Customer in accordance with this clause 9 or otherwise, the Goods shall be and remain at the Customer's risk at all times and the Customer shall comprehensively insure the Goods against loss or damage by accident, fire, theft or other risks usually covered by insurance in the type of business carried out by the Customer.
- (d) Unless otherwise agreed by the Company in writing payment for Goods is due in accordance with paragraphs (e) and (f) of this clause 9.
- (e) In the case of approved credit accounts agreed to in writing by the Company and subject to the provisions of paragraphs (g) and (h) of this clause 9 payment for the Goods shall be due within 30 days from the date upon which the Company shall notify the Customer that the Goods are ready for Delivery, time for payment to be of the essence.
- (f) If the Customer does not have an approved credit account payment of Goods is due with order and the Company reserves the right not to process such order until the related payment has been received.
- (g) In the case of orders involving considerable expenditure on manufacture or otherwise before delivery can be made the Company shall be entitled to apply for progress payment s in respect of the costs of labour materials and work executed to date. Any such application shall be communicated to the Customer in writing, shall state the amount claimed and shall set forth particular details of the work executed in respect of the period covered by the application. Payment shall be made within 30 days of the date of application thereof.
- (h) In all other cases payment shall be due prior to the agreed date for delivery and the dates of progress payments if any shall be those fixed between the Company and the Customer at the time of acceptance by the Company of the order.
- (i) Interest on overdue accounts – interest at the rate of 1½% per month will be charged on all accounts which are overdue for payment as set out in paragraph (d) of this clause 9, as amended by paragraphs (e) (g) and (h), unless specific arrangements to the contrary have been agreed in writing by the Company.

10. INSTALLMENT ORDERS

Where Goods are delivered to the Customer by instalments each instalment so delivered will be invoiced to the Customer as if the subject of a separate order and the Customer shall make payment thereof within the period provided by these conditions. Failure by the Company to deliver anyone or more of such instalments shall not entitle the Customer to refuse to pay for an earlier delivery or to refuse to accept delivery of any other instalments nor shall the Customer's liability to the Company with regard to those other instalments be in any way affected.

11. SALE OR RETURN

No Goods supplied by the Company are supplied on a sale or return basis unless the Company has agreed to this effect in writing before any Delivery has taken place. Goods supplied on a sale or return basis shall be returned by the Customer, carriage paid, to be received by the Company on or before expiry of three months from the date of delivery. If the Goods are not received by the Company within the three months specified above the Company will have no liability to accept the return of the Goods and at the expiry of the three months period the Goods will be invoiced to the Customer and immediate settlement will be required.

12. RETURNS

Goods returned without the written agreement of the Company will not be accepted for credit. Where Goods have been returned by agreement, the Company reserves the right to make a charge for handling.

13. FORCE MAJEURE

Should the Company suffer any cause whatsoever beyond its control that results in the delay, prevention, restriction or hindrance of any delivery for a period of more than three months from the planned delivery date the Company shall be at liberty to cancel or suspend the Contract without incurring any liability for any loss or damage resulting therefrom.

14. CANCELLATION

The Company reserves the right without penalty to cancel any order or to suspend delivery of any Goods the subject hereof.

- (i) In the event of the Customer failing to make due payment of any monies owing to the Company under that or any other order;
 - (A) OR
 - (ii) in the event of the Company being prevented or hindered from executing such an order by industrial action or by any cause whatsoever beyond the reasonable control of the Company.
- In the event of such cancellation or suspension of delivery the Company shall be under no liability whatsoever to the Customer for any loss or damage howsoever the same shall have been caused.

15. GENERAL LIABILITIES

- (a) The Company hereby warrants that all Goods supplied are Free From Defects in material and workmanship BUT the Company's liability under this warranty shall be limited to making good without charge by repair or (at the discretion of the Company) replacement any defects which the Company is satisfied are defects of material or work in a ship in Goods to which no alteration or repair has been undertaken by the Customer and which are returned to the Company's premises carriage paid immediately the Customer becomes aware of the defects (and in any event either within six calendar months after the Customer has placed the product in service, or twelve months after delivery, whichever is the sooner).
- (b) The warranty contained in paragraph (a) of this Clause 15 given in lieu of and shall be deemed to exclude all other warranties and conditions whether express or implied and whether arising by common law statute or otherwise other than relating to title to the Goods. In particular but without limitation of the foregoing the Company shall not be liable for the failure of any of the Goods supplied to be fit for any particular purpose for which they are required.
- (c) The warranty contained in paragraph (a) of this Clause 15 applies only if the Customer has followed any written or verbal instructions or recommendations as to use provided by the Company. In the event that any defect results from the Customer's non-compliance with any such instructions, then the aforesaid warranty shall not apply.
- (d) The Company shall not be liable for any loss, injury or damage of any nature whatsoever whether direct or consequential arising out of or in connection with any Goods supplied, but nothing in this clause excludes the Company's liability under statute for death or personal injury caused by the Company's negligence.
- (e) In the event that the Company is liable by this warranty or otherwise for direct losses these shall be limited to the higher of:
 - i. The cost to the Customer of the faulty Goods supplied by the Company and shown to be defective; and
 - ii. Twenty-five thousand pounds.
- (f) The Customer shall not rely upon any representation concerning any Goods supplied unless the same shall have been made by the Company in writing.
- (g) The complete or partial invalidity or enforceability of any provision hereof shall in no way affect the validity or enforceability of such provision for any other purpose or the remaining provisions hereof.

16. DAMAGE OR LOSS IN TRANSIT

No claim for damage in transit or shortage in delivery will be entertained unless a separate notice in writing is given to the carrier concerned and to the Company within three days of delivery followed by a detailed and complete claim in writing within seven days of delivery. In the event of loss or destruction of the Goods in transit or notification of non-delivery must be submitted in writing to the carrier and to the Company within fourteen days of the date of consignment as notified by the Company to the Customer or in the event of such notification arriving subsequent to the date of consignment then within fourteen days of actual receipt of such notification. Where advance notification of intended delivery has not been given or Goods are sent by parcel post through the Post Office notification of non-delivery must be submitted in writing to the Company within twenty-one days of receipt of any document, including an invoice from the Company, indicating that the Goods may have been despatched.

17. DEFAULT OR INSOLVENCY OF THE CUSTOMER

If the Customer shall fail to take delivery of any Goods when required or make default or commit a breach of any of its obligations under this Contract or any other order or Contract with the Company or if any distress or execution or other legal process shall be levied upon any of the Customer's property goods or assets or if the Customer shall make or offer to make a ny arrangement or composition with creditors or commit any act of bankruptcy or, being a limited company, the Customer shall go into liquidation or suffer the appointment of a Receiver of its undertaking, property or assets or any part thereof, the Company shall at any time thereafter be entitled to determine the Contract and without prejudice to its other rights hereunder recover from the Customer any loss on sale of the Goods or works comprised in the Contract. Without prejudice to the foregoing the Company may in the event of default on the part of the Customer in paying any sum due under this or any other Contract or order suspend delivery of the Goods or work until such default has been made good. In the case of a Contract for the sale of Goods by instalments each instalment shall be deemed to be sold under a separate Contract, and in the event of the Customer's default in respect of any such instalment the Company shall be entitled to determine the Contract with regard to any instalments not yet delivered.

18. JURISDICTION

- (a) The conditions set out herein are in addition to the Company's rights under Common Law.
- (b) The construction, validity and performance of the Contract shall be governed by English law and the Customer and the Company agree to submit to the non-exclusive jurisdiction of the English Courts.

19. DEFINITIONS

- (a) The "Company" means Atlas Copco IAS UK Limited (registered number 1873269) whose registered office is Second Avenue, Deeside Industrial Park, Deeside, Flintshire, CH5 2NX.
- (b) The "Customer" means any company, business, person or organisation from whom the Company receives an order for the supply of Goods or services.
- (c) The "Price List" means any document, schedule or other list issued by the Company, whether issued as a Price List or as a part of another document, and purporting to set out the prices at which the Company will sell the parts described and listed therein to any Customer to whom the Price List has been properly issued.
- (d) The "Valid To Date" means that where a Price List is marked as having a Valid To Date, the said Price List will expire on the said date and all prices listed therein will not be valid thereafter other than at the discretion of the Company.
- (e) The "Goods" are any systems, assemblies, parts or rrvets ordered by the Customer and supplied to them by the Company.
- (f) The "Contract" means the agreement between the Company and the Customer for the supply of Goods or services as set out in the Company's quotation, tender or Price List. The Contract is made when the Company receives a duly authorised order from the Customer as set out in clause 5.
- (g) "Ex-works" means that the Goods are deemed to be delivered at the Company's works and that the Customer is responsible for arranging delivery to their final destination as set out in clause 3(b).
- (h) "Goods Sold in Quantity" means any Goods supplied by the Company in quantity such that it is impracticable to individually count the items to be delivered.
- (i) "Free From Defects" means that the Goods conform in all material respects to any general specification that the Company may have provided to establish the characteristic s of the said Goods, but expressly excludes any warranty as to fitness for purpose.