

Atlas Copco Kompressoren und Drucklufttechnik GmbH

General Terms and Conditions for Goods Deliveries

Status: March 2017

1. Application, General

1.1 The present General Terms and Conditions for Goods Deliveries, hereinafter referred to as „General Terms of Sale“, apply to all our business relationships with our clients, hereinafter referred to as „Customers“. The present General Terms of Sale only apply in case the Customer is an entrepreneur within the meaning of para. 14 of the German Civil Code, a governmental entity or a special governmental estate.

1.2 Except where the parties have expressly agreed upon differently, the present General Terms of Sale apply as master agreement to future similar contracts in the latest version notified to the Customer in text form, without us having to refer to them in every single case.

1.3 The present General Terms of Sale shall apply exclusively. Differing, contrary or complementary general terms and conditions of the Customer shall only become part of the contract if and insofar as we have expressly agreed to their application, even if we perform delivery without reserve despite our knowledge of the general terms and conditions of the Customer.

1.4 Legally relevant declarations and notices of the Customer to us after the conclusion of the contract require written form in order to be effective.

2. Offer, Conclusion of the Contract

2.1 Our offers are not binding, except where they are expressly denoted as binding or where they contain a certain term for acceptance. We are entitled to accept orders or commissions of the Customer within thirty (30) days from their receipt.

2.2 Our specifications relating to the subject matter of the supply or the service, such as measures, tolerances and technical specifications, shall only apply approximately, except where their usability for the purposes of the contract requires exact conformity. They are only descriptions or characterizations of the supply or the services, not guaranteed characteristic features. Discrepancies due to legal provisions or technical improvement as well as the replacement of material or parts are permitted, provided they do not impair the usability stipulated in the contract.

2.3 We reserve the ownership and the copy right in every offer or preliminary estimate of costs, as well as in every document made available to the Customer. The Customer shall not be entitled to make such documents available to third parties without our express assent. If we request him to do so, the Customer shall entirely return to us such documents.

3. Prices, Terms of Payment, Offset, Right to Retain

3.1 Except where the parties have expressly agreed upon differently, our list prices effective at the respective time of conclusion of the contract shall apply. In case delivery is scheduled more than four (4) months after the conclusion of the contract, list prices effective at the time of delivery shall apply. Prices are ex works / ex warehouse plus statutory Value Added Tax. Costs for packaging, transportation, transport or other insurance requested by the Customer, assembly, means of production and, as the case may be, commissioning and utilization of the data surveillance system (article 6. of the present General Terms of Sale) shall be invoiced separately. The Customer shall support possible customs duties, fees, taxes, or other public charges.

3.2 Invoices shall be paid within thirty (30) days without deduction, except where the parties have agreed upon differently in writing. We are at any moment entitled, even in an existing business relationship, to require payment in advance before any complete or partial delivery. We shall declare such reserve at the moment of the confirmation of the offer the latest. The payment by cheque or by bill of exchange is excluded, except where the parties have agreed upon differently in an individual case.

3.3 After expiration of the term of payment in accordance with article 3.2 of the present General Terms of Sale payment shall be delayed. During delay, default shall accrue interests in the amount provided by law. We reserve the right to claim further damages for delay.

3.4 The Customer shall be entitled to offset only insofar as his counterclaim is assessed in a legally binding judgement or undisputed. The Customer shall be entitled to claim retaining rights only to the extent such rights are based on the same transaction.

4. Delivery, Export Control, Term of Delivery, Default in Delivery, Partial Delivery

4.1 Except where the parties have expressly agreed upon differently, delivery shall be performed ex warehouse. This is also the place of performance of the delivery and of a possible alternative performance. Upon Customer's request and at his cost the goods shall be forwarded to a different place of delivery (Sale to Destination). Except where the parties have expressly agreed upon differently, we shall be entitled to determine the mode of forwarding, such as the forwarder, the routing and the packaging.

4.2 Our obligations as well as the obligations of the Customer on the contract or under the present General Terms of Sale are subject to the proviso that their performance is not prohibited by applicable export control regulations.

4.3 Terms and dates of delivery announced by us only apply approximately, except where we have expressly promised or agreed to a fixed term or date. In case the parties have agreed on forwarding, terms and dates refer to the time when the goods are transferred to the forwarder, to the carrier, or to any other person entrusted with the transportation.

4.4 We can require the Customer to extend the terms of delivery or of performance or to postpone the date of delivery or of performance for the period of time during which the Customer does not perform his contractual obligations. Our rights resulting from the Customer's delay remain unaffected.

4.5 We are not liable for the impossibility to deliver or for any default in delivery, insofar as such impossibility or default is due to a force majeure event or to any other event that was unpredictable at the time of the conclusion of the contract we are not responsible for. Insofar as such event substantially impedes or prevents us from performing the supply or the service and provided such impediment is not only temporary, we shall be entitled to repudiate the contract. In case the impediment is only temporary, the terms of delivery or of performance are extended or the date of delivery or of performance is postponed for the period of time of the impediment plus an adequate start-up term. In case the Customer cannot reasonably be obliged to accept the supply or the service due to the delay, he shall be entitled to repudiate the contract by prompt written declaration.

4.6 In case we are in delay with a supply or a service for any reason whatsoever, our liability shall be limited in accordance with article 10. of the present General Terms of Sale.

4.7 We shall be entitled to perform partial deliveries, provided such partial delivery is usable for the purpose provided for in the contract, the delivery of the remaining goods is ensured, and the Customer does not have to bear considerable additional work or expense due to such partial delivery.

5. Commissioning

The commissioning of the goods shall be performed under our respon-

sibility and direction, except where the parties have expressly agreed upon differently or where we have renounced commissioning, expressly or tacitly, because of the nature or the condition of the goods. We shall perform commissioning with Customer's service and maintenance staff. Commissioning shall consist in the performance of a test engine idle.

6. Data Surveillance System

6.1 Some of our goods are equipped with a data surveillance system. The data surveillance system, by processing data collected by the machines exploited by the Customers that are equipped with specific hardware and registered in the product system, provides certain information and services on a server where the Customer can call it up via a website, hereinafter referred to as the "Website".

6.2 The data surveillance system is protected by law. The intellectual property rights in relation to the data surveillance system exclusively pertain to us, in our relation with the Customer. We hereby grant to the Customer the necessary right to exploit the data surveillance system on the machines exploited by the Customer, by conceding him a simple right to use.

6.3 We are entitled to modify the data surveillance system, provided such modifications increase the security of the data surveillance system, are required to comply with legal, judicial or administrative requirements or entail an extension of the provided information and services. Customer's obligations remain unaffected by such modifications.

6.4 The Customer is the sole owner of the data collected and processed by the data surveillance system. We process the data on behalf of the Customer. We are obliged to take and to maintain the technical and organisational measures adequate at every moment to protect the data. We shall only use the data for the purposes mentioned in article 6.1 of the present General Terms of Sale. We have no proper rights whatsoever related to the data. However, we are entitled to use the collected data for development, marketing and statistic purposes, provided the use of the data for these purposes does not allow drawing conclusions on the identity of the Customer.

7. Transfer of Risks, Default in Acceptance

7.1 The risk of accidental loss of or damage to the goods passes to the Customer no later than upon the transfer of the goods to the Customer. However, in the case of a Sale to Destination, the risk of accidental loss of or damage to the goods as well the risk of delay passes already at the moment of the handing-over of the goods to the forwarder, to the carrier or to any other person entrusted with the transportation. In case the parties have agreed upon an acceptance, transfer of risks shall take place at the moment of acceptance. The other legal provisions on contracts for work shall apply to the acceptance as well. Default in acceptance shall have the same effect as handing-over or acceptance.

7.2 If the Customer is in default in acceptance, if he omits to participate in the performance or if the delivery is delayed for any other reason attributable to the Customer, we shall be entitled to claim resulting damages including additional outlay. We shall be entitled to claim 0,25% of the invoice amount per complete week as a lump compensation for the stocking of the goods. We remain entitled to prove a higher damage and our legal remedies, in particular the right to repudiate, remain unaffected. However, the lump compensation shall be counted against exceeding financial claims. The Customer remains entitled to prove that we have suffered no loss at all or less than the amount of the lump compensation.

8. Retention of Title

8.1 The retention of title agreed upon by the parties serves as a security for all our actual or future claims against the Customer resulting from the relationship of supply existing between us, including balance claims resulting from a current account limited to this relationship of supply.

8.2 The goods we have delivered to the Customer remain our property until receipt of all secured payments in full. The goods as well as those goods replacing them in accordance with the following provisions and covered by the retention of title shall hereinafter be referred to as the "reserved goods".

8.3 The Customer shall hold the reserved goods in custody for us free of charge.

8.4 The Customer shall be entitled to process or to alienate the reserved goods in the course of his business until the occurrence of the case of realization in accordance with article 8.9 of the present General Terms of Sale. He shall not be entitled to pledge or to transfer the ownership as a security.

8.5 In case the reserved goods are processed, the parties agree that procession is made on our behalf as the manufacturer and that we immediately become the owner or, in case the procession uses components of different owners or the value of the processed object is higher than the value of the reserved goods, the co-owner of the newly created object at the ratio of the quota of the value of the reserved good in the value of the newly created good. In case we should not become owner, the Customer transfers to us as of now his future ownership or, at the above mentioned ratio, co-ownership as a security. In case the reserved goods are united or confused with other objects to form one integrative object and one of the other objects has to be considered as the main object, insofar as we become owners of the main object we shall transfer co-ownership of the integrative object to the Customer at the ratio mentioned in the first sentence of this article.

8.6 In case of further disposal of the reserved goods, the Customer as of now assigns the resulting claims against the acquirer to us as a security, in case of co-ownership of the reserved goods at the ratio of our co-ownership. The same applies to other claims that replace or result from the reserved goods. We authorize the Customer to collect the assigned claims in his own name. This authorization is revocable. However, we are not entitled to revoke the authority before the occurrence of the case of realization.

8.7 In case third parties take hold of the reserved goods, in particular by way of seizure, the Customer shall promptly inform them about our ownership and inform us, in order to enable us to enforce our right of ownership. Insofar as the third party is not able to reimburse us the judicial and extra-judicial costs, the Customer shall be liable for such costs.

8.8 We shall liberate the reserved goods as well as objects or claims replacing them, insofar as their value exceeds the amount of the secured claims by more than 50%. We shall be entitled to choose the objects to be liberated.

8.9 In case we repudiate the contract because of a breach of the contract by the Customer, in particular in case of delay of payment, we shall be entitled to claim delivery up of the reserved goods.

8.10 The Customer shall be entitled to process or to alienate the reserved goods in the course of his business until the occurrence of the case of realization in accordance with article 8.9 of the present General Terms of Sale. He shall not be entitled to pledge or to transfer the ownership as a security.

8.11 In case the reserved goods are processed, the parties agree that procession is made on our behalf as the manufacturer and that we immediately become the owner or, in case the procession uses components of different owners or the value of the processed object is higher than the value of the reserved goods, the co-owner of the newly created object at the ratio of the quota of the value of the reserved good in the value of the newly created good. In case we should not become owner, the Customer transfers to us as of now his future ownership or, at the above mentioned ratio, co-ownership as a security. In case the reserved goods are united or confused with other objects to form one integrative object and one of the other objects has to be considered as the main object, insofar as we become owners of the main object we shall transfer co-ownership of the integrative object to the Customer at the ratio mentioned in the first sentence of this article.

8.12 In case of further disposal of the reserved goods, the Customer as of now assigns the resulting claims against the acquirer to us as a security, in case of co-ownership of the reserved goods at the ratio of our co-ownership. The same applies to other claims that replace or result from the reserved goods. We authorize the Customer to collect the assigned claims in his own name. This authorization is revocable. However, we are not entitled to revoke the authority before the occurrence of the case of realization.

8.13 In case third parties take hold of the reserved goods, in particular by way of seizure, the Customer shall promptly inform them about our ownership and inform us, in order to enable us to enforce our right of ownership. Insofar as the third party is not able to reimburse us the judicial and extra-judicial costs, the Customer shall be liable for such costs.

8.14 We shall liberate the reserved goods as well as objects or claims replacing them, insofar as their value exceeds the amount of the secured claims by more than 50%. We shall be entitled to choose the objects to be liberated.

8.15 In case we repudiate the contract because of a breach of the contract by the Customer, in particular in case of delay of payment, we shall be entitled to claim delivery up of the reserved goods.

9. Warranty

9.1 The statutory provisions apply to warranty claims of the Customer for defects of quality or in title including mistaken or insufficient delivery, improper assembly or defective assembly instruction unless otherwise provided for hereinafter.

9.2 The agreement of the parties on the quality of the goods is the basis of our liability for defects. Insofar as no agreement has been reached on the quality of the goods, the statutory provisions apply to the assess-

ment of whether or not a defect exists. The Customer shall not be entitled to claim warranty for the non-compliance of the data surveillance system (article 6. of the present General Terms of Sale) with Customer's requirements. The data surveillance system complies with the criterion of practical usability and has the usual quality of products of this kind. However, it is not exempt of flaws.

9.3 The warranty claims of the Customer presuppose that he has performed his obligation of inspection and objection. In case a defect shows during the inspection or later, we have to be promptly informed by written notice. A notice is deemed to have been made promptly if it is made within two (2) weeks. The posting of the notice within this time limit is sufficient to be in accordance with it. Irrespective of his obligation of inspection and objection, the Customer shall have to notify in writing obvious defects including mistaken or insufficient delivery within two (2) weeks from delivery. The posting of the notice within this time limit is sufficient to be in accordance with it. In case the Customer fails to correctly perform his obligation of inspection and objection, our liability for the unnoticed defect shall be excluded.

9.4 In case the delivered goods are defective, alternative performance can consist, at our choice, in the remedy of the defect (remediation) or in the delivery of an object free from defects (replacement). Our right to refuse alternative performance under the statutory requirements remains unaffected. We are entitled to require the payment of the due price before we provide due alternative performance. However, the Customer is entitled to retain a portion of the price the amount of which is adequate with regard to the defect.

9.5 The Customer shall grant us the required time and opportunity for due alternative performance. In particular, he has to hand over to us the rejected goods for examination. In case of replacement, the Customer shall return to us the defective object in accordance with the statutory provisions. Alternative performance does not imply removal and fitting of the defective object, except where fitting is part of our contractual obligations.

9.6 We shall bear the expenses required for examination and alternative performance including in particular the costs for transportation, work and material, if the good is actually defective. Otherwise we can claim from the Customer reimbursement of the incurred costs.

9.7 If the alternative performance has failed, if a term fixed by the Customer for the alternative performance has expired or if such fixing of a term is dispensable according to statutory provisions, the Customer shall be entitled to repudiate the contract or to reduce the price. However, in case of an insignificant defect there is no right to repudiate.

9.8 In case of a defect, the Customer can claim damages or reimbursement of vain expenses only in accordance with article 10.2 of the present General Terms of Sale. For the rest, such claims are excluded.

10. Liability

10.1 Except as otherwise provided in the present General Terms of Sale, we shall be liable for the breach of our contractual or extra-contractual in accordance with the statutory provisions.

We shall not be liable without fault for initial material defects of the data surveillance system nor shall we be liable for disturbance of Customer's access to the Website, provided this disturbance is not due to a disturbance of the Website.

10.2 We shall be liable for culpable damage, for any reason whatsoever, in case of intent or gross negligence. In case of ordinary negligence and except where any attenuation of liability applies, we shall exclusively be liable

(a) for damages resulting from death, bodily or health injury and

(b) for damages resulting from a non-negligible breach of an obligation the performance of which is indispensable for the performance of the contract and on the performance of which the contractual partner typically relies and may rely. However, in such case our liability is limited to the compensation of the predictable and typically occurring damage.

10.3 The limitations of liability resulting from article 10.2 of the present General Terms of Sale also apply to breaches of obligations committed by persons the behaviour of whom we are liable for, as well as in favour of such persons. They do not apply insofar as we have intentionally kept secret a defect or as we have guaranteed the quality of the goods. They do not apply to claims of the Customer in accordance with the German Product Liability Act as well.

10.4 In the case of a breach of an obligation that does not consist in a defect, the Customer shall only be entitled to repudiate the contract if we have acted culpably. For the rest, the statutory preconditions and consequences apply.

11. Limitation

11.1 By derogation from para. 438 (1) no. 3 BGB, the general limitation period for claims arising out of defects in title or of quality shall be twelve (12) months starting from the placing into operation. However, it shall not exceed eighteen (18) months starting from delivery. For spare parts, the general limitation period for claims arising out of defects in title or of quality shall be twelve (12) months starting from delivery. Insofar as the parties have agreed on a reception, reception shall replace delivery in the preceding sentence. Special statutory provisions, in particular para. 438 (1) no. 1 and 2, 444, 479 BGB remain unaffected.

11.2 The preceding limitation periods of the sales law also apply to contractual or extra-contractual damage claims of the Customer, except where the application of the ordinary statutory limitation provision would lead to a shorter limitation period in an individual case. However, damage claims of the Customer in accordance with article 10. of the present General Terms of Sale as well as damage claims in accordance with the German Product Liability Act become statute-barred only in accordance with the statutory limitation periods.

12. Miscellaneous

12.1 Insofar as the contract or the present General Terms of Sale contain gaps, the legally effective provisions the parties would have agreed upon in accordance with the goal of the contract and the purpose of the General Terms of Sale, if they had known the gaps, are deemed to have been agreed upon for the purpose of the filling of these gaps.

12.2 The relationship between the Customer and us are exclusively governed by the law of the Federal Republic of Germany excluding its conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods of 11th April 1980 (CISG).

12.3 The present General Terms of Sale shall be construed in accordance with German legal understanding, even if they are used in English or French language. In case the English or French meaning diverges from the German meaning, the German meaning shall prevail.

12.4 The exclusive place of jurisdiction for all disputes arising out of or in connection with the contract or the present General Terms of Sale shall be the place of our registered office. However, we are entitled to bring proceedings before the courts of the place of performance in accordance with the present General Terms of Sale or with a paramount individual agreement or of the Customer's place of general jurisdiction. Overriding legal provisions, in particular provisions relating to exclusive jurisdiction, remain unaffected.

