

**BY PROCEEDING WITH ANY TRANSACTION WITH THE SUPPLIER, YOU AGREE AND ACKNOWLEDGE THAT THESE TERMS AND CONDITIONS ADDRESS IMPORTANT MATTERS. THE FOLLOWING IS A SUMMARY OF IMPORTANT TERMS AND CONDITIONS THAT MAY AFFECT YOUR RIGHTS AS A CONSUMER:**

#### **CONDITION 4 – SUPPLY AND TRANSPORT**

*This condition details the delivery arrangements around the supply of Goods and Services as well as when risk passes to you. Generally, it is your obligation to take delivery and arrange for shipping unless we have agreed otherwise.*

#### **CONDITION 9 – LIABILITY AND INDEMNIFICATION**

*This condition sets out any limits the remedies available to you outside of your remedies under the law, if the Goods or Services provided by us are defective or have been incorrectly performed. If we suffer loss because of your use of the Goods or arising from use by a third party to whom you on-supply the Goods, you are indemnifying us against amounts (costs, damages, loss), unless, we have caused that loss by our negligence or have assumed liability for that loss under these Terms.*

#### **CONDITION 11 – CANCELLATION**

*This condition provides in what circumstances you may request a cancellation. We may either accept or refuse a cancellation request. If we accept a cancellation request, you may be liable to pay compensation for as a percentage of the purchase price of the Goods or Services ordered.*

**PLEASE ENSURE THAT YOU REVIEW AND UNDERSTAND THE TERMS INCLUDING THE LIABILITY, DELIVERY AND CANCELLATION PROVISIONS BEFORE PLACING A PURCHASE ORDER WITH ATLAS COPCO AUSTRALIA PTY LTD AS THE SUPPLIER AND, IF APPROPRIATE, SEEK COMPETENT INDEPENDENT ADVICE.**

These Conditions govern supply of all Goods and/or Services by Supplier to Customer. Any supply of Goods and/or Services by Supplier to Customer made after the date of acceptance of these Conditions, is a supply pursuant to this master supply contract, constituted by the Supplier's Quote, the accepted Purchase Order and these Conditions and any such supply does not give rise to a new or separate contract, unless otherwise agreed between the parties.

## **1. SCOPE**

1.1 In these Conditions:

**"Supply"** means any supply by Supplier to Customer including the supply of Goods and/or Services;

**"Customer"** means the party buying Goods or procuring Services and shall include, if the context so permits, its agents or sub-contractors;

**"Supplier"** means Atlas Copco Australia Pty Ltd, ABN 85 620 125 153, including the relevant division named on the Purchase Order;

**"Purchase Order"** means an order placed on Supplier by Customer;

**"Product"** means a product owned by Customer to be the subject of a Service;

**"Purchase Price"** means the price to be paid by Customer to Supplier for the Goods and/or Services (for Services, Purchase Price will mean the average annual value of Service fees payable by the Customer during the term of the agreement between Customer and Supplier);

**"Goods"** means products, consumable materials, equipment, equipment components, spare parts, software and other goods and materials supplied by Supplier to Customer (including any exchanged products supplied by Supplier as part of providing Services);

**"Services"** means any services supplied by Supplier to Customer; and

**"Service Exchange"** means the exchange of a product shipped by Customer to Supplier with a new or refurbished Good of the same type.

1.2 These Conditions apply to and are deemed to be incorporated in all contracts for Goods and Services and, save where Supplier and Customer have both agreed to specific terms as identified in the accepted Purchase Order, shall apply to and prevail over all conditions endorsed on, delivered with or contained in Customer's purchase terms, or any Purchase Order, or other documentation. All Purchase Orders are subject to acceptance by Supplier.

1.3 Once accepted, the Supplier's Quote, the Purchase Order and these Conditions shall constitute the contract

("Contract") between the Customer and the Supplier for the Supply and shall constitute the entire agreement between the Customer and the Supplier in relation to the Supply.

1.4 Except as set out in this Contract, all warranties, terms, conditions implied by statute, common law or otherwise are, to the extent permitted by law, excluded from this Contract.

1.5 Notwithstanding any other condition or provision, any supply of Goods ordered and/or commencement of Services by the Supplier is done so, strictly in accordance with these Conditions and the Contract and any terms and conditions supplied or communicated by the Customer are expressly rejected. This applies even if there is wording in any of the Customer's terms, conditions or communications that provide that the Supplier is deemed to have accepted such terms or conditions if the Supplier does an act, such as (but not limited to) providing goods, accepting an order, or accepting payment, and the Supplier performs such act.

1.6 Notwithstanding any other provision, should this Contract relate to the provision of rental or hire services, further conditions, which can be found here [>>>](#) ("**the Additional Conditions**") are incorporated into this Contract in full. In the event of any inconsistency between these Conditions and the Additional Conditions, with respect to any Purchase Order which seeks the supply of rental or hire services (which has been subsequently accepted by the Supplier), the Additional Conditions shall prevail. If the Customer is unable to access a copy of the Additional Conditions through this link, then a copy can be provided on request at the time of submission of the Purchase Order by the Customer.

## **2. PRICE QUOTATIONS**

2.1 Prices quoted for

- a) standard Goods and Services remain valid for 30 days unless otherwise specified; and
- b) non-standard Goods and Services are estimates and may be increased in the event of increases in Supplier's costs to produce and supply the non-standard Goods and Services including but not limited to:
  - (i) increases in the cost of labour and materials;
  - (ii) change in regulatory requirements concerning hazardous materials; and/or
  - (iii) increases to handling, delivery and shipping costs. Supplier will promptly notify the Customer in writing upon becoming aware of any increase in the estimated Purchase Price for non-standard Goods and Services as a result of increases in Supplier's costs as contemplated by this Condition.

2.2 Prices quoted are exclusive of all applicable taxes, including but not limited to, any goods and services tax, excise, and/or use taxes, levies and duties of any nature whatsoever ("Taxes") applicable to the Goods and Services. The Supplier is entitled to increase the amount payable by the Customer by all Taxes unless Customer provides Supplier with an exemption certificate for a Tax acceptable to the relevant taxing authority.

## **3. INSPECTION AND TESTING**

3.1 All Goods are inspected by Supplier before supply to Customer and tested where appropriate.

3.2 An additional charge will be made for tests or trial runs carried out at Customer's specific request. If the Customer does not attend such arranged requested tests, after 14 days' written notice, Supplier will perform the tests and subject to the Goods passing such testing the Goods will be deemed accepted in Customer's absence.

## **4. SUPPLY AND TRANSPORT**

4.1 Supplier will use reasonable efforts to supply Goods and Services within the time requested in the Purchase Order and, in any event, within a reasonable period.

4.2 Unless otherwise agreed in writing all shipments shall be made FCA (Incoterms 2020) Supplier's production, distribution facilities or repair centres. Unless other delivery arrangements are agreed, Supplier may, at Customer's request and expense, arrange carriage and insure Goods against normal transit risks to the value of the Purchase Price. Risk of damage to or loss of Goods shall pass to Customer on Supplier's delivery of the Goods to the carrier. Should Customer carry out the transport of the Goods, Customer shall have in place all adequate transit insurance with insurers of good reputation to the value of the Purchase Price, and Customer shall ensure that Supplier is noted as additional insured on this insurance. Risk of damage to or loss of Goods, shall pass to Customer in accordance with the agreed terms and should the Customer or its agent carrier carry out transport of the Goods, Customer will be responsible for paying the Purchase Price, where the Supplier has retained title to the Goods.

4.3 Customer shall take delivery of the Goods in accordance with the delivery date specified in the Contract or at the latest 5 days from Supplier's written notification that the Goods are ready for delivery, whichever is the latest (the "Delivery Date"). Customer will supply Supplier with delivery instructions promptly on notification to Customer that

Goods are ready for shipment.

4.4 Customer's obligation to take delivery of the Goods as provided in these Conditions constitutes a material obligation of Customer.

4.5 This condition 4.5 is to be read subject to condition 10 (Force Majeure). Where the Goods to be supplied are new, Customer may request a deferral of the Delivery Date provided this request is in writing and made at the latest 6 weeks prior to the due date of shipment. Supplier may accept or refuse, at its sole discretion, a request for deferral. Notwithstanding any other remedies available under these Conditions, should deferral of delivery be for a period longer than 14 days from the Delivery Date, Supplier shall be entitled to charge Customer compensation amounting to up to 2% of the Purchase Price per month of delay, to be paid by Customer within 30 days of issuance of the corresponding invoice. Deferral of the Delivery Date shall not in any case be for longer than 3 months from the initial Delivery Date. Without prejudice to Condition 12, at the expiry of the 3-month period Supplier shall be entitled to make arrangements for storage of the Goods at an appropriate place of its choice, having regard to the nature of the Goods, at Customer's expense. In such case, Supplier's obligation to deliver the Goods will be deemed satisfied in this case when placed in storage and Customer will be responsible for the risk of loss of, or damage to, the Goods, except to the extent of any negligence, fraud or fraudulent misrepresentation of the Supplier with respect to storage of the Goods), and for paying the Purchase Price.

4.6 Where the Goods to be supplied are not new, or where Supplier is to return a Product after it is serviced, Customer will supply Supplier with delivery instructions promptly on notification to Customer that the Good or Product is ready for shipment. Should shipment or collection be postponed for more than 14 days after such notification:

- a) Supplier shall be entitled to make arrangements for storage of the Good or Product at Customer's risk and expense at an appropriate place of its choice, having regard to the nature of the Goods,
- b) Supplier may charge Customer compensation at the rate of up to 2% of the Purchase Price per 14-day period or part thereof from the date of such notification and Customer shall pay such amount within 30 days of invoice, and
- c) Supplier's obligation to deliver the Goods or Product will be deemed satisfied in this case when placed in storage and Customer will become responsible for the risk of loss of or damage to the Goods or Product except to the extent of any negligence or fraud, or fraudulent misrepresentation by the Supplier and for paying the Purchase Price.

4.7 In the case of Service Exchange, Customer must ship at its cost the product to be exchanged to Supplier within thirty (30) days of the date of the relevant Purchase Order. Should the Customer not comply with this obligation:

- a) the Supplier may charge a non-return compensation which shall be calculated at the rate of up to two per cent (2%) of the Purchase Price of the original product to be exchanged for each 14 day-period during which the Supplier has not received the product to be returned, with the non-return compensation being payable within thirty (30) days of the date of invoice by Supplier and
- b) should delay in returning the product exceed 3 months from the date of the relevant Purchase Order, Supplier shall be entitled to terminate the Purchase Order or that part of the Purchase Order related to the Service Exchange. When the replacement product has been supplied by Supplier and the product to be returned has not been received by Supplier, Customer shall pay the price which would be due against the supply of a new Good of equivalent specification, less any amount already paid towards the Service Exchange. Customer shall pay within 30 days of the date of invoice.

4.8 The parties agree that compensation and other expenses payable under the Conditions above are a genuine pre-estimate of the costs and losses which Supplier would suffer from Customer not taking delivery of the Goods and/or for non-return of exchange product on the Delivery Date.

4.9 If any of the Conditions above are found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Supplier to stated compensation, the Supplier any right it may to claim against the Customer damages at Law for the Customer's failure to comply with the relevant conditions.

4.10 The payment of the stated compensation does not in any way relieve the Customer from any of its obligations and liabilities of the Customer under the Contract.

4.11 In cases where a Product is received by Supplier in respect of which no Purchase Order, or other written authority, is given to Supplier to carry out Services within 60 days of receipt by Supplier, Supplier may, at its option, either return the Product to Customer or dispose of the Product as Supplier thinks fit and Supplier may charge Customer for, and Customer agrees to pay, all storage, return and/or disposal costs.

4.12 Customer shall ensure and warrant that it shall comply with any applicable export or import laws, regulations or guidance and that it shall not import, export or re-export, directly or indirectly, the Goods, or other item related to the Goods, in or to

- a) any country subject to an embargo or applicable sanctions measures under the laws of any country or under any

international laws, including, but not limited to, measures imposed targeting the following countries or designated parties connected with the following countries Cuba, Iran, North Korea, Sudan and Syria and/or

- b) any country for which an import or export/re-export licence or approval or certificate is required, without obtaining such licence or approval or certificate prior to importing or (re)exporting. Customer shall attach to all Purchase Orders the necessary information to permit Supplier to commence its work, together with any import licence and/or permits or certificates, which may be necessary. Supplier shall not be liable for delay in delivery or non-delivery of the Goods or any associated item due to
- (i) any restriction on the import or export of the Goods or any associated items, or
  - (ii) non-compliance by Customer with this Condition or with the law or
  - (iii) delay or refusal of export or import licence or approval by any relevant authority.

Supplier may request, and if so Customer shall provide, in advance and as a condition of delivery, a signed statement providing information related to the use of the Goods and any associated items and/or the full identity of the end-user or any intermediary in the transaction. Notwithstanding any other provision of the Contract, Supplier shall be entitled to terminate the Contract with immediate effect and without liability if it has reasonable grounds to suspect that Customer has breached or intends to breach this Condition and refund to Customer any amounts paid by Customer after deduction by Supplier of its reasonable costs and expenses arising prior to termination of the Contract

4.13 Goods will be supplied and paid for as available unless Customer specifically requests "one consignment". Supplier may suspend shipment of any unfulfilled Contract between the parties in the event of a breach of Customer's obligations under the Contract.

4.14 Subject to the Customer's rights at law, all Goods and/or Services supplied in accordance with the Contract will be deemed accepted unless Customer within a reasonable time notifies Supplier in writing that the Goods or Services are not in compliance with the Contract. Any damaged Goods and packaging must be kept for inspection by Supplier.

4.15 Supplier may modify the specification of Goods provided that the modification does not materially affect the performance, form or fit of the affected Good. For any material modification impacting the performance of the Good, Supplier seeks to make, Supplier will seek the Customer's prior written consent and if the Customer does not consent, Customer may cancel the Purchaser Order and the terms of condition 11 apply.

4.16 Services, installation and commissioning are not included in the Purchase Price for the Goods, unless it is agreed, in writing, otherwise.

4.17 Customer shall be responsible for de-installing, de-commissioning and shipment of any Product in all circumstances. Before shipping, Supplier shall notify Customer of any issues making such Product unsuitable for the performance of Services.

## **5. PAYMENT**

5.1 All amounts are stated, and payments are to be made, in Australian dollars unless otherwise agreed in writing. If Customer specifies a different currency, Supplier reserves the right to amend the quoted price by any amount to cover movements in the exchange rate between the relevant currency and Australian dollars arising between the time of quotation and acceptance of the Purchase Order.

5.2 Full payment, without any deduction whatsoever, must be made to Supplier within 7 days of the date of an invoice issued with respect to the supply of Goods and/or Services, or 30 days of the date of an invoice issued with respect to the supply of any rental or hire services under the Additional Conditions, unless otherwise agreed in writing. Invoices will normally be issued on the date of delivery of the Goods (or the date of deemed delivery) or completion of the Services. Any invoice disputes must be raised by Customer within 15 days from date of invoice, and any undisputed portion of the invoice paid within the terms of the invoice. Or the invoice shall be considered to be accepted by Customer. Time for payment shall be of the essence.

5.3 All Purchase Orders are subject to credit approval before shipment. If, in Supplier's reasonable judgement, Customer's financial condition does not at any time justify payment terms as previously specified, Supplier may cancel or suspend any unfulfilled Contract. Supplier may require Customer to furnish Supplier with a confirmed irrevocable letter of credit drawn on a bank acceptable to Supplier.

5.4 If any payment is overdue, Supplier shall be entitled, without prejudice to any other right or remedy, to suspend all further deliveries to Customer without notice and/or to charge interest on any amount overdue, at the rate of 1.25% per month or such lesser rate as advised by the Supplier, calculated daily.

5.5 Any sum due by the Customer may be offset by the Supplier (at the Supplier's sole discretion) against any sums due by Supplier to Customer under the Contract or any other contract between Customer and Supplier.

5.6 In addition to the Purchase Price, the Customer agrees and acknowledges that payments to Supplier of any

invoices exceeding the sum of AUD \$500,000 by credit card shall incur a fee of 1.2% of the payment being processed.

5.7 The Customer agrees that payment for the Goods and /or Services rendered shall not be made by personal, business or bank cheques. Acceptable forms of payment include direct transfer and, subject to condition 5.6, credit card. Any payment made by cheque will be considered null and void, and the Customer shall be responsible for providing an alternative form of payment in accordance with these Conditions.

## **6. RETENTION OF TITLE**

6.1 Subject to Condition 6.2, and notwithstanding any other Conditions in this Contract, Goods shall remain Supplier's property until Customer has made full and unconditional payment to Supplier of all sums due to it in respect of the Goods.

6.2 Title to Product remains with Customer unless it becomes the subject of Service Exchange in which case title passes to Supplier upon receipt of the Product at the Supplier service centre.

6.3 Any consignment stock, inventory or materials held at Customer's site and owned by Customer for the use of Supplier in carrying out the Services shall be at the risk of the Customer.

6.4 Until payment in full by Customer, Goods shall be held by Customer as bailee for Supplier and will be kept, unaltered and in good condition (at no cost to Supplier) separately from all other goods of Customer or any third party in such a way that they remain readily identifiable as Supplier's property.

6.5 If payment becomes overdue, or on the occurrence of any termination event referred to in Condition 12 below, Supplier may, where permitted by law, and after giving notice to Customer, enter upon any premises where Supplier reasonably believes Goods to be, or otherwise take action, to recover Goods.

6.6 From delivery and prior to full payment of the Purchase Price, Customer shall maintain the Goods in satisfactory condition and keep them insured under adequate insurance policies with insurers of good reputation, covering the Purchase Price.

## **7. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

7.1 Supplier shall retain all right, title and interest in and to, and possession of, any know-how, technical information, plans, drawings, specifications or documents, ideas, concepts, methods, processes, techniques and inventions developed or created by or on behalf of Supplier, whether before or after this Contract has been entered into and supplied by Supplier under any Contract. All such information shall be kept confidential by Customer and shall not be disclosed to any third party unless, and until the same is, or becomes public knowledge (other than by a breach of confidentiality), nor shall any such information be used by Customer for any purpose, other than for the purpose of using any Goods supplied under the Contract, without Supplier's prior written consent.

7.2 Ownership is retained by Supplier of any patent, copyright, trade secret, design right or other intellectual property right in or relating to the Supply and Customer shall acquire no rights in or over such intellectual property rights save as expressly set out herein including, but not limited to, any technical information, know-how, drawings and specifications supplied by Supplier or relating to the Supply.

7.3 Supplier's trademarks and names and those of its associated companies shall not be used by Customer otherwise than as applied by Supplier to Goods, Services or associated documentation.

## **8. WARRANTY**

8.1 The current version of the Atlas Copco Standard Warranty:

- a) if you are purchasing Goods or Services from the Supplier's Compressor Technique or Vacuum Divisions can be found here [>>>](#);
- b) if you are purchasing Goods or Services from the Supplier's Power Technique Division can be found here [>>>](#);
- c) if you are purchasing Goods or Services from the Supplier's Rentals Division can be found here [>>>](#); and
- d) if you are purchasing Goods or Services from the Supplier's Industrial Tools Division can be found here [>>>](#);
- e) if you are purchasing Goods or Services from the Supplier's Air Technology Group can be found here [>>>](#).

8.2 The full terms of the relevant Warranty, as referred to in condition 8.1 that applies to any Purchase Order to which these Conditions relate to ("the Standard Atlas Copco Warranty") is incorporated in full into this Contract. If for any reason the Customer is unable to access the digital version of the relevant warranty, a copy can be provided by Supplier on request at the time of submission of a Purchase Order by the Customer.

8.3 Subject to condition 8.4, and to the maximum extent permitted by law, the rights and remedies in the Standard Atlas Copco Warranty are the Customer's sole and exclusive remedies for:

- a) any defect in the Goods or any Services;
- b) any failure to correctly perform any Services; and



- c) damage of any kind to an Atlas Copco machine (for the avoidance of doubt this includes machines that are branded "Atlas Copco") that is caused by any defect in the Goods or any failure to correctly perform any Services.
- 8.4 Nothing in the Standard Atlas Copco Warranty, or in condition 8.3, affects any non-excludable statutory rights, or non-excludable statutory remedies, that the Customer may have under State, Territory or Federal legislation.

## 9. LIABILITY AND INDEMNIFICATION

9.1 To the extent permitted by law and subject to Condition 8, the following provisions set out the entire liability of Supplier (including any liability for the acts or omissions of its employees, agents, or subcontractors) to Customer in respect of:

- a) any breach of these Conditions and/or the Contract; or
- b) any representation, statement or tortious act or omission, including negligence, arising under or in connection with these Conditions.

9.2 Nothing in these Conditions excludes or limits the liability of Supplier for:

- a) death or personal injury caused by Supplier's negligence or
- b) fraud or fraudulent misrepresentation or
- c) any other liability that cannot be excluded or limited by law and the Contract should be read as subject to such restrictions on exclusions and limitations.

9.3 Subject to Conditions 9.2 and 9.4, notwithstanding any other provision in this Contract to the contrary, the Supplier's total liability under this Contract, however caused, whether in contract, tort (including negligence), under any statute or otherwise, arising from or related in any way to this Contract (including, to avoid doubt, arising from or related in any way to the Goods) is limited in aggregate for any and all claims to AUD 100% of the Purchase Price, or the actual amount received by the Supplier from the Customer in connection with this Contract at the time of the claim, whichever is the lesser. To avoid doubt, the cap in this Condition 9.3: (i) applies in all cases; (ii) applies to loss or damage of any kind; and (iii) applies to any amounts that the Supplier is required to pay to the Customer (or to reimburse the Customer for).

9.4 Neither party shall be liable to the other Party for pure economic loss, loss of profit, loss of business, depletion of goodwill, loss of anticipated savings, injury to reputation, loss of revenue, interruption of production, loss of production costs, additional or wasted costs, any damages claimed from the Customer by third parties, or like risks, in each case whether direct, indirect or consequential, and whether or not foreseeable at the date of the Contract or otherwise any claims for any indirect or consequential loss or compensation whatsoever which arises out of, or in connection with the Supplier's failure to comply with the Contract.

9.5 If Customer fails to perform any of its obligations pursuant to these Conditions, Customer shall pay Supplier all reasonable costs and expenses incurred by Supplier, including all attorney's fees, in enforcing Supplier's rights relating to such obligation, whether by formal proceedings or otherwise, in addition to any other remedy available to Supplier.

9.6 Save as provided in this Condition or arising at law, Supplier shall have no liability in contract, tort (including negligence), misrepresentation, restitution, or otherwise arising as a result of the performance or contemplated performance of the Contract.

9.7 Customer will indemnify and keep indemnified Supplier from and against any costs, claims, demands, liabilities, damages or losses and all interest, penalties and legal and other professional costs and expenses (including legal fees and disbursements on a full indemnity basis to the extent that the Customer has caused such costs) arising out of or in connection with the negligent or incorrect use of Goods. This indemnity shall cover (but is not limited to) Supplier's liability to third parties arising out of the use or sale of the Goods, except to the extent caused by Supplier's negligence or falling within liability expressly assumed by Supplier under these Conditions.

9.8 Despite Condition 8, if Supplier fails to comply with a non-excludable guarantee under the Australian Consumer Law, to the extent permitted by law, Supplier limits its liability for that failure:

- A. in the case of Goods, at Supplier's option to:
  - (a) the replacement of the Goods or the supply of equivalent goods; (b) the repair of the Goods; (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (d) the payment of the cost of having the Goods repaired; and
- B. in the case of Services, at Supplier's option to: (a) supplying the Services again; or (b) payment of the cost of having the Services supplied again.

## 10. FORCE MAJEURE

10.1 Neither Customer nor Supplier shall be liable for failures in performance, including delay or non-shipment, resulting from any acts, omissions or failures, if that act, omission or failure results directly from an event or

circumstance beyond its reasonable control. For the avoidance of doubt failure by Customer to comply with condition 4.12 is not a Force Majeure event.

10.2 In the event of such delay, the date of shipment or performance shall, at the request of the non-performing party, be deferred for a period equal to the time lost by reason of the delay and otherwise for a reasonable time.

## 11. CANCELLATION

11.1 Customer may request a cancellation of the Contract to the extent it relates to the sale of Goods, provided such request is given in writing and at the latest six (6) weeks prior to the due date of shipment and the Goods are standard Goods. Supplier may accept or refuse, at its sole discretion, a request for cancellation in other circumstances, except that where the cancellation right arises because the Supplier seeks to modify the Goods in any material respect under condition 4.15, in which case the Customer may cancel that the Purchaser Order or any part of that Purchase Order relating to the Goods to be modified. Without prejudice to any other rights the Customer or Supplier may have, upon cancellation where manufacture of the Goods has commenced or Goods and related materials obtained by the Supplier, Customer shall pay Supplier compensation equivalent of up to 20% of the Purchase Price for standard Goods and in the event the Supplier accepts a request for the cancellation of a non- standard Good, at least 30% of the Purchase Price for non-standard Goods, within thirty (30) days from issuance of the corresponding invoice. Where cancellation arises for the reasons set out in condition 4.15, no compensation is payable to Supplier and Customer is entitled to a refund of any pre-paid amount of the Purchase Price without any further amounts payable by the Supplier to Customer.

11.2 Unless agreed otherwise in writing by Supplier, should Customer cancel any Contract to the extent it relates to the sale of Services, Customer shall pay to Supplier the costs of all work done and materials purchased or provided in connection with the Services up to the time of cancellation, plus compensation for all costs and losses equivalent to 15% of the Purchase Price. In the event that fees for the Services have been amortised, the Supplier will assess the costs of all work done and materials purchased or provided in connection with the Services against the amortised fees already paid by the Customer to evaluate whether there is any shortfall in the fees payable for the Services provided against the periodic fees already paid by the Customer.

11.3 The parties agree that such sums payable to Supplier under this Condition are a genuine pre-estimate of the costs and losses which Supplier would suffer from Customer cancelling all or part of the Contract.

11.4 If the terms on this Condition are found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Supplier to the stated compensation, the Supplier retains its right to claim against the Customer damages at Law for the Customer's cancellation of part of all of the Contract not otherwise permitted under an enforceable term of this document.

11.5 The payment of the stated damages does not in any way relieve the Customer from any of its other obligations and liabilities under the Contract.

## 12. TERMINATION

12.1 If Customer is subject to any act of bankruptcy or, being a company, has a receiver appointed or an administration order made against it or goes into liquidation or if a similar event occurs under applicable insolvency laws (except for the purpose of reconstruction or amalgamation) then all sums due to Supplier under the Contract shall immediately become due and payable and Supplier may, notwithstanding any previous waiver, terminate the Contract forthwith by written notice.

12.2 Supplier or Customer may terminate the Contract with immediate effect in the event of a failure by the other party to comply with any material provision of these Conditions if the failure continues for more than 14 days after the non-defaulting party has been given written notice of such failure.

12.3 If Customer fails to collect or take delivery of the Goods within 3 months of the Delivery Date, Supplier shall be entitled, without prejudice to its other rights, to terminate all or part of the Contract and to dispose of the Goods, and to charge Customer a compensation of up to 20% of the Purchase Price (standard goods) or at least 30% of the Purchase Price (non-standard goods), to be paid by Customer within 30 days of issuance of the corresponding invoice. The parties agree that such sums payable to Supplier under this Condition are a genuine pre-estimate of the costs and losses which Supplier would suffer from Customer not taking delivery of the Goods.

12.4 Termination shall be without prejudice to any prior right of either party or any provisions (including but not limited to Conditions 5, 6, 7 and 9) which by nature shall survive termination.

12.5 If the terms of Condition 12.3 are found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Supplier to the stated compensation, the Supplier shall be entitled to claim against the Customer damages at Law for the Customer's failure to collect or take delivery of any Goods or Products of the Contract.

12.6 The payment of the stated compensation does not in any way relieve the Customer from any of its other obligations and liabilities of the Customer under the Contract.

### **13. CUSTOMER'S DUTIES AND RESPONSIBILITIES WHEN SERVICES ARE PROVIDED**

13.1 All Products and environments (whether at Supplier's or Customer's or Customer's premises) must be free from risks to health and safety (save to the extent notified to, and specifically accepted by, Supplier in writing). Supplier may decline, without incurring any liability, to service any Product, or work in any environment in which, in Supplier's reasonable opinion, the risks to health and safety are not managed satisfactorily by Customer.

13.2 Customer will permit Supplier prior to commencement of any Services to assess the condition of the Products and the working environment. Supplier shall be under no obligation to service any Product which, in Supplier's reasonable opinion, has been used in a way or for a purpose for which it was not suitable or intended, has not been operated and maintained in accordance with the manufacturer's operating instructions, is too old or in too poor a condition to be serviced economically or is in any way unsafe.

13.3 Supplier shall have the right and Customer shall provide all necessary access and cooperation to enable Supplier to carry out a risk assessment.

13.4 Customer will provide Supplier with all available operating documentation, drawings, test certificates and maintenance inspection reports relating to any Product.

13.5 Customer will indemnify and hold Supplier harmless against any loss, claim or damage suffered by Supplier or its employees, agents or sub- contractors on the Customer's site except to the extent caused by Supplier's or its employees, agents or sub- contractors' own negligence.

### **14. PPSA**

14.1 Customer acknowledges and agrees that: (i) the Contract is a security agreement, and creates a purchase money security interest in the Supplier's favour (Security Interest), in accordance with the Personal Property Securities Act 2009 (CTH) (PPSA); (ii) value has been given to the Customer for the Security Interest or the Customer has done an act by which it has arisen; (iii) the Supplier may register a financing statement for the Security Interest; (iv) the Customer waives their right to receive a registration event notice; (v) the collateral is a class ("Other Goods" (non-inventory, commercial property)) comprising all Goods supplied under this Agreement; and (vi) PPSA Sections 95, 130, 132(3)(d), 132(4), 135 and 143 will not apply.

14.2 The Customer: (i) must not do (or fail to do) anything which could (or does) interfere with (or affect) a security interest of the Supplier (including a right to enforce or register one); (ii) must assist the Supplier in registering, perfecting, enforcing or otherwise dealing with a security interest of the Supplier or any of the Supplier's other rights; and (iii) must (if the Customer breaches this condition 14.2) comply with the Supplier's instructions as to the treatment of any Goods provided under these Conditions (including procuring access to third party premises).

14.3 Each of conditions 14.1(i)-(vi) and 14.2(i)-(iii) are severable without affecting the others in any way. This condition 14 does not affect any other security interests or limit the Supplier's rights or remedies under the PPSA.

### **15. MISCELLANEOUS**

15.1 Customer may neither assign, novate nor otherwise transfer nor deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Supplier.

15.2 Save as expressly provided, no term or provision of these Conditions shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).

15.3 No waiver by either party of any breach of any of these Conditions by the other party shall be deemed to constitute a waiver of any other breach nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy hereunder operate as a waiver thereof. A waiver given by a party hereunder shall be binding upon such party only if in writing and signed by such party.

15.4 In the event that any term or provision of the Contract is declared null and void or unenforceable by any court of competent jurisdiction, the remainder of the provisions of these Conditions shall remain in full force and

15.5 effect to the fullest extent permitted by applicable law.

15.6 Nothing contained in these Conditions shall be deemed to require Supplier to take any action that would constitute, directly or indirectly, a violation of any laws of any applicable jurisdiction, and Supplier's failure to take any such action shall not be deemed a breach hereunder.

15.7 All drawings, descriptive matter, technical specifications, capacities, performance rates, descriptions and other particulars given in respect of Goods (whether in catalogues or advertisements or accompanying or referred to in the Contract) are stated by Supplier in good faith based on Supplier's experience as being correct within acceptable



tolerances but are not binding in detail and do not form part of the Contract unless specifically stated to do so. Unless agreed otherwise in writing, it is Customer's responsibility to ensure that Goods are sufficient and suitable for Customer's purposes.

15.8 Customer hereby acknowledges that relevant safety and training literature relating to the Goods and Services will be supplied by Supplier to Customer free of charge and may be photocopied by Customer or copied electronically as required. Customer shall be fully responsible for the implementation of the contents of all safety and training literature provided by Supplier. Customer shall ensure persons who use, maintain or otherwise handle Goods or receive Services receive adequate safety and training literature.

15.9 Customer and Supplier shall comply at all times with Supplier's code of practice which can be found at <https://www.atlascopco.com/en-au/about-atlas-copco/sustainability/highest-ethical-standards/code-of-conduct> and with all applicable laws, statutes and regulations, in particular those related to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act as amended from time to time (the "Requirements"), and Customer shall have in place and shall maintain at all times its own policies and procedures to ensure compliance with the Requirements by Customer's employees, officers, representatives, subcontractors and customers and shall enforce them where appropriate. Supplier shall be entitled to terminate the Contract immediately upon written notice to Customer if Customer or any person employed by it or acting on its behalf commits or may be deemed or is suspected to have committed or intends to commit a breach of the Requirements. If Customer suspects or knows that there is any breach or intended breach of the Requirements by Customer or any person employed by it or acting on its behalf, Customer will notify Supplier immediately.

15.10 In the interpretation of the Contract, no rule of contract interpretation applies to the disadvantage of one party on the basis that it put forward the relevant conditions, the Contract, or any part of it.

## **16. TRADE COMPLIANCE**

16.1 Notwithstanding any provision or condition in the Contract to the contrary, any quotation issued by the Supplier is legally binding upon the Supplier only after the Customer has received a written acceptance from the Supplier of any Purchase Order from the Customer based on that quotation and the Supplier can at any point in time withdraw the Supplier's quotation.

16.2 By placing any Purchase Order with the Supplier, the Customer certifies, warrants and represents that the Goods, the subject of the Purchase Order, will not be used for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons, nor any other purpose prohibited by applicable law.

16.3 In addition to condition 16.2, the Customer further certifies, warrants and represents that:

- a) the Customer will comply with applicable local and international foreign trade and customs requirements or any embargos or other sanctions (collectively "Foreign Trade Obligations");
- b) the Goods, the subject of the Purchase Order will not be sold or transferred, directly or indirectly, to Iran, North Korea, Syria, Russia, Belarus, Crimea or any contested region of Ukraine or Russia

16.4 The Customer will immediately notify the Supplier, in writing, of any breach or possible breach of this condition 16.

16.5 The Supplier shall not be obligated to fulfil a binding order or agreement or any part thereof or related to it, nor liable for its non-fulfilment, if such fulfilment is prevented by any impediments arising out of Foreign Trade Obligations.

16.6 The Supplier shall have the right to terminate a Contract, binding order or agreement or any part thereof or related to it, with immediate effect and without prior notice, if fulfilment is prevented by any impediments arising out of any Foreign Trade Obligations.

16.7 The Customer shall indemnify the Supplier for any direct damages arising in consequence of or otherwise in connection with any breach of this condition 16.

## **17. GOVERNING LAW AND DISPUTE RESOLUTION**

17.1 The Contract and any claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of New South Wales, Australia.

17.2 Customer and Supplier agree that the courts of New South Wales, Australia shall have the exclusive jurisdiction to settle any disputes, which may arise in connection with the Contract.

17.3 Supplier shall have the option to bring suit before the Courts of the domicile of Customer when the claim is for or related to payments due from Customer.