

SAVE TO THE EXTENT THAT WE HAVE OTHERWISE AGREED IN WRITING, THESE TERMS AND CONDITIONS GOVERN ALL OUR CONTRACTS TO THE EXCLUSION OF OTHER TERMS AND CONDITIONS. OUR QUOTATIONS AND ESTIMATES ARE NOT OFFERS CAPABLE OF ACCEPTANCE BY YOU, AND ANY ORDER PLACED BY YOU WILL ONLY BE ACCEPTED BY OUR WRITTEN CONFIRMATION OF SUCH ORDER.

## 1. BASIS OF CONTRACT

- (a) BAUER COMPRESSORS ASIA PTE LTD, 25 Pandan Crescent, #01-10 Tic Tech Centre, Singapore 128477, (the "Company") – markets and installs high pressure compressors for air and gas, dryers, control systems, spare parts, and provides ancillary goods and services ("the Products").
- (b) No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the date of this Contract except as expressly stated in this Contract. The Customer's only remedies shall be for breach of contract as provided for these terms.
- (c) This Contract shall be construed in accordance with Singapore Law and subject to the exclusive jurisdiction of the Singapore Courts.
- (d) All orders are subject to "Minimum Order Value" (MOV) of three hundred and fifty Singapore Dollars (SGD 350.00) or equivalent in other currencies, at the time of the order. For orders with an order value of less than MOV net an additional surcharge of fifteen Singapore Dollars (SGD 15.00) plus transportation and insurance fees can be charged. This will be imposed at the discretion of the Company.

## 2. TIMING OF DELIVERY AND COMMISSIONING

- (a) In the event of delay beyond any date agreed for the Company's performance of its obligations under this Contract that is caused by circumstances beyond either party's control and/or otherwise than as provided for in sub-clause (c) below, the Company will be entitled to a reasonable extension of time and to compensation for any costs, expenses and losses if it suffers by reason thereof.
- (b) While dates or periods for readiness for dispatch or delivery of goods are given in good faith the same are not of the essence of or in any way terms of the contract or representations of fact.

## 3. ENGINEERING CRITERIA

The Products are sophisticated engineering products; accordingly, the Customer undertakes:-

- (a) That it has provided and will promptly provide all the information reasonably necessary to enable the Company to
  - (i) evaluate the requirements for performing and
  - (ii) perform the Contract, and that all such information is full and accurate.
- (b) That all premises, plant, engineering support, spare parts, connected pipe work and machinery and inputs that it is required to provide for the design, engineering, installation, testing and use of the Products are fit for their purpose and of good engineering quality.
- (c) To use the Products for the intended purpose only and in accordance with the Product literature;
- (d) Not under any circumstances, to use unapproved spare parts, connected machinery, service or repair or use the Products in any manner as may render the Products dangerous and agrees that any breach of these negative criteria will negate all specific and implied conditions and obligations on the part of the Company relating to the quality of the Products. The Customer further agrees that it will be liable to the Company for any costs, expenses and losses it suffers by reason of any breach of these undertakings.

## 4. DRAWINGS, DESIGNS AND CONFIDENTIALITY

- (a) All of the Company's specifications, designs, drawings, indications of physical, chemical and electronic properties, and indications of pressure output and power consumptions ("the Designs") are made in good faith and are indications only and are not binding in detail unless the customer has specified in writing a particular indication upon which he is relying and the Company shall be entitled to vary the same and/or to correct errors and omissions provided the Products remain in substantial conformity with the contractual requirements.
- (b) The Designs (including all copyright, design right and other intellectual property in them) shall as between the parties be the property of the Company; and the Customer is not entitled to make any use of the Designs other than for the purpose of this Contract.
- (c) Any inventions, modifications, improvements, techniques or know-how affecting the Products made or gained in the course of performing this Contract, shall belong to the Company absolutely.
- (d) Neither party shall disclose to third parties nor use for its own purposes, any confidential information or trade secrets of the other party. Each party warrants that it has the necessary intellectual property rights to enable it to perform its contractual obligations and will forthwith inform the other on discovery of any infringement of intellectual property rights.

## 5. PRICES AND TERMS

- (a) All invoices shall be paid in Currency of invoice within the period agreed from the date of invoice (the "Due Date") unless expressly agreed otherwise, without any deduction or withholding on account of any rights of equitable set-off which the Customer may have (save where the same are based on fraud). The company reserves the right to require payment in part or full or the provision of such security or guarantees from or on behalf of the Customer as the Company deems necessary before the commencement of the performance of the Contract. The company shall without prejudice to its other rights, have the right by notice in writing to the Customer, to demand immediate payment of all monies due from the Customer to the Company for any goods delivered at any time.
- (b) Prices quoted are Ex-Works (EXW, Incoterms 2010) Company's plant, unless otherwise previously expressly agreed in writing.
- (c) The Company reserves the right to charge interest on overdue accounts at 1.5% over its banker's base lending rate and such interest shall accrue on a monthly basis.
- (d) Terms are confirmed irrevocable letter of credit on shipment, which shall be in a form acceptable to the Company and confirmed by a Singapore bank of international reputation, unless the terms have otherwise been agreed upon in writing by the Company.
- (e) In case of any non-payment, the Company prejudice shall be entitled (without to its other rights) to suspend performance and charge the Customer for all costs and expenses occasioned thereby and/or at any time thereafter to terminate the Contract in accordance with clause 8 below.
- (f) Without prejudice to clause 5(b), title to the Products shall transfer to the Customer upon delivery, provided however, that in the event delivery is prior to full payment, Company shall retain a security interest in the Products until the Company receives payment in full. Pending payment of the full purchase price of the Products, the Customer shall at all times keep the Products comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Customer in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest. In addition, the Customer undertakes not to charge by way of security any of the Products that remain the collateral of the Company.
- (g) In the event of Termination in accordance with clause 8 below or in the event of non-payment (in full or in part) for the Products or other materials (whether delivered under this Contract or otherwise) by the applicable Due Date the Customer hereby irrevocably licenses the Company (insofar as it is able) to enter upon any premises to repossess the Products.
- (h) The company's prices are subject to adjustments to take account of any variation in the Company's costs (beyond the reasonable control of the Company) including (but not limited to) variations in the cost of materials, labour, and/or overheads, exchange rate fluctuations, alteration of duties, changes to the specification by the Customer and other costs since the date of the quotation or (if no quotation is issued) the order acknowledgement. The Company accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted and the invoice so adjusted shall be payable as if the price set out therein were the original contract price.
- (i) All prices exclude any use, sales, excise, government or local taxes which has been or may be imposed with respect to any purchase from the Company.
- (j) Any typographical, clerical, or other error or omission in quotation, sales literature, price list, acceptance, offer, or other documentation or information issued by the seller shall be subject to correction without liability on the part of the seller.

## 6. CLAIMS – WARRANTY & INCORRECT OR SHORT SHIPMENT

- (a) In this clause "Warranty Period" shall mean twelve (12) months from the date of commissioning, or eighteen (18) months from the date of dispatch, (whichever transpires earlier) unless specified otherwise in writing by the Company.
- (b) The Company warrants that the Products will be free from material defects caused by inadequacy or neglect in the Company's workmanship or materials during the Warranty Period (the "Warranty")
- (c) Where any valid claim in respect of the Products or any part thereof, which can be shown to the Company's reasonable satisfaction to be based on a breach of the warranty, is notified to the company during the Warranty Period, the Company will (at the Company's sole option) repair or replace the Products, or (at the Company's sole option) credit a sum to be agreed with the Customer in lieu of the replacement of, any Product of part thereof.
- (d) The value of any claim under the Warranty cannot exceed the original value paid by the Customer for the Products
- (e) There are no third party beneficiaries of the Warranty granted by the Company herein.
- (f) For warranty claim procedure information, please refer to Bauer Compressors Asia Pte Ltd or our respective distributors and agents.

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- (g) The Company shall use its best endeavours to ensure accurate fulfilment of all orders. In the event of shipment of incorrect goods or short shipment of goods, the Customer must inform the Company within seven (7) days of receipt of goods. The Company shall be under no liability for any breach of the contract for any claim made after this period.
- (h) New part returns and warranties must be handled expeditiously. Goods purchased by the customer may with the written consent of the Company, be returned under the terms and conditions of the Company's warranty and procedure instructions depending on the condition of the goods. An additional restocking fee might be imposed. Furthermore shipping of the goods to the Company's plant will be sole responsibility of the customer.

#### 7. LIMITATIONS OF LIABILITY AND FORCE MAJEURE

- (a) To the full extent permitted by applicable law, and without prejudice to clause 7(f), the Company shall in no circumstances be liable (whether in contract, tort or for negligence or breach of statutory duty or otherwise arising out of, or in connection with, the Contract) to the Customer to the extent that such liability:
  - (i) is calculated by reference to profits, income, production or accruals or loss of business, loss of data, loss of profits, loss of goodwill, loss of anticipated savings, loss of revenue;
  - (ii) arises from any inaccuracies or omission in any instructions, information, drawings, calculations, specifications of material supplied by the Customer to the Company;
  - (iii) is of a special, incidental, indirect, consequential or exemplary nature;
  - (iv) is recovered by the Customer under the terms of any insurance policy (apart from any excess applicable to the relevant insurance); or
  - (v) has been made good or is otherwise compensated without cost to the Customer.
- (b) To the full extent permitted by applicable law, and without prejudice to clause 7(f), except for the limited remedies provided above in clause 6: Warranty, the Company grants no warranties or conditions, express or implied in any communication by the Company to the Customer, or otherwise, regarding the Products. All warranties, conditions, representations and terms expressed or implied whether by statute, common law or otherwise are, to the extent permitted by law, excluded from these terms.
- (c) The Company makes no representation regarding compliance with any state, provincial, or local law, rules and regulations, building code or ordinance relating to the installations or operation of the Products ("local laws"). The Customer acknowledges to comply with all applicable laws, rules and regulations relating to the installation and operation of the Products and indemnifies the Company from any claims actions, losses (including without limitation, loss of profit), damages, costs and expenses (including without limitation, legal costs and expenses) thereof.
- (d) The Company shall be liable for damage to the Customer's physical property caused by the Company's negligence in connection with the production, manufacture or installation of the Products provided that the Company's total aggregate liability for such damage shall not exceed the equivalent of SGD 1,520,000.00 with respect to any one event or series of connected events.
- (e) Without prejudice to clause 7(f) the Company's maximum aggregate liability under or in connection with this contract, whether arising in breach of contract, tort (including negligence), breach of statutory duty or otherwise, shall in no event exceed the greater of SGD 1,520,000.00 and the total amount payable/paid by the Customer under the Contract.
- (f) Nothing in these terms shall exclude or limit the Company's liability for
  - (i) fraud,
  - (ii) death of personal injury caused by its negligence,
  - (iii) breach of terms regarding title implied under the Singapore Companies Act, or
  - (iv) any other liability to the extent that the same may not be excluded or limited as a matter of law.
- (g) Notwithstanding anything to the contrary in these terms, neither party shall be liable to the other for breach of its obligations under this Contract by reason of circumstances or events beyond the reasonable control of either of them.
- (h) The Customer shall indemnify the Company against all actions, suits, claims, demands, costs, charges, damages, losses and expenses suffered or incurred by the Company and/or for which it may be liable to any third party due to, arising from or in connection with directly or indirectly;
  - (i) the Customer's instructions or lack of instructions;
  - (ii) any failure or delay whatsoever in taking delivery or any other act, neglect or default on the part of the Customer, its servants, agents, employees; or
  - (iii) the breach of any provision of this Agreement by the Customer.
- (i) The Customer shall indemnify and keep indemnified the Company against all costs, claims, losses, expenses and damages incurred by the Company or for which it may be liable to any infringement or alleged infringement of patents, trademarks, copyright, design, right or other intellectual property right occasioned by the importation, manufacture or sale of the Products if made to the specification or special requirement of the Customer.

#### 8. CANCELLATION AND TERMINATION

- (a) In the case where the Products are being designed or adapted to a Customer's specific requirements, then the Customer shall (subject to 8(c) below) be entitled to cancel this Contract ("Cancellation") only by agreement in writing by the parties and upon payment to the Company of such amount as may be necessary from the Cancellation.
- (b) The Company shall be entitled forthwith to terminate this Contract in the event of non-payment (in whole or in part) by the Due date or if at any time before payment in full is made (whether or not payment is yet due) a petition is presented or resolution passed for the winding up or bankruptcy of the Customer, an encumbrancer takes possession or in the event of the appointment of a receiver or administrator of the Customer's business ("Termination"). The same applies when the Company reasonably apprehends that any of the events mentioned above is about to occur and the customer is notified accordingly. The Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Company and in respect of goods delivered but not paid for, the price shall immediately be due and payable not withstanding any previous agreement to the contrary.
- (c) In the event of Cancellation or Termination the Customer shall be liable to the Company for all the costs and expenses which it incurred up until the date thereof and the profit it reasonably expected to make on the Contract had the same been fully performed, less such net sum (if any) as the Company is expected to make in disposing of the Products.

#### 9. GENERAL

- (a) If any provision or part of a provision of these terms is found to be illegal, invalid or unenforceable under any applicable law, such provision or part of a provision shall, insofar as it is severable from the remaining terms, be deemed omitted from these terms and shall in no way affect the legality, validity, or enforceability of the remaining terms.
- (b) Only variations or modifications to the Contract which are made in writing signed by Customer and Company shall be enforceable.
- (c) The Customer may not assign, novate or otherwise transfer its rights or obligations under this Contract without the Company's prior written consent, and any attempt to do so shall be null and void and of no effect.
- (d) Any failure by the Company to enforce its rights under this Contract will not be deemed as a waiver of such rights.

#### 10. SPECIAL PROVISIONS

- (a) Neither the Equipment nor the parts sold hereunder are designed or manufactured for use in or with any atomic installation or activity. If the Customer or the ultimate user of the Products or parts intends to use the Products or parts in such an installation or activity, it must first seek and obtain the approval of the Company.
- (b) Customer understands and agrees that the Products may be subject to export and other foreign trade controls restricting resale and/or transfers to other countries and parties, including, but not limited to, licensing requirements under applicable laws and regulations of the European Union and the United States (together, "Trade Control Laws"). Customer shall not export, re-export, transfer, or otherwise dispose of the Products directly or indirectly, except as permitted by applicable Trade Control Laws. Customer shall not do anything that would cause the Company or its affiliates to be in breach of applicable Trade Control Laws. Furthermore, Customer shall protect, indemnify and hold harmless the Company and its affiliates from any fines, damages, costs, losses, liabilities, penalties, and expenses incurred by the Company as a result of Customer's failure to comply with this clause.
- (c) Catalogue weights are approximate and may vary with equipment specifications.
- (d) The conditions supersede all previous conditions of sale.