

TERMS AND CONDITIONS OF SALE

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1. Definitions

- 1.1 "Seller" shall mean Kaeser Compressors NZ Limited, its successors and assigns or any person acting on behalf of and with the authority of Kaeser Compressors NZ Limited.
- 1.2 "Buyer" shall mean any person ordering Goods or Services from, or accepting any quotation given by, the Seller and includes any person acting on behalf of the Buyer.
- 1.3 "Guarantor" means any person or entity who has given a guarantee to the Seller in respect of the obligations of the Buyer.
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context permits shall include any supply of Services) and includes Goods described on any invoices, quotation or any other forms as provided by the Seller to the Buyer.
- 1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context permits shall include any supply of Goods).
- 1.6 "Price" shall mean the price payable by the Buyer for the Goods and Services.
- 1.7 "Working Days" has the meaning set out in the Property Law Act 2007.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of these terms and conditions.
- 2.2 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are binding and may only be amended with the written consent of the Seller.
- 2.3 The Buyer must provide the Seller with at least seven days prior written notice of any change in the Buyer's name, address and/or any other change in the Buyer's details.

3. Price And Payment

- 3.1 The Price shall, subject to clause 3.3, be either:
- (a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
- (b) if a quote has been given then the Seller's quoted Price which shall be binding on the Seller provided that the Buyer has accepted the Seller's quotation in writing within 30 days of issue.
- 3.2 At the Seller's sole discretion a deposit may be required at any time before any Goods or Services are provided.
- 3.3 Unless otherwise specified, Prices shall be ex warehouse (Seller) and otherwise based on then current costs of administration, labour, materials, freight, insurance and rates of foreign exchange, customs duty and landing charges, and on latest quotations from sub-contractors, manufacturers and suppliers. Any variations to these will be to the Buyer's account.
- 3.4 With regards to freight and packaging costs, which shall be paid in addition to the Price, those costs shall be charged at actual cost to the Seller, plus a handling fee as set by the Seller, in its sole discretion.
- 3.5 Payment for the Goods shall be of the essence and unless otherwise agreed in writing cleared payment shall be due by the 20th of the month following the date of invoice.
- 3.6 Payment is to be made by bank cheque or by direct credit, or by any other method as agreed in writing between the Buyer and the Seller.
- 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are stated to be expressly included in the Price.

4. Delivery Of Goods

- 4.1 Subject to any contrary agreement in writing between the Seller and the Buyer, delivery of the Goods shall take place on the earlier of the following:
- (a) the Buyer takes possession of the Goods at the Seller's warehouse; or
- (b) the Goods are delivered to the Buyer's address (in the event that it is agreed in writing that the Goods are to be delivered by the Seller or the Seller's nominated carrier to the Buyer's address); or
- (c) the Buyer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Buyer's agent.
- 4.2 Subject to any contrary agreement in writing between the Seller and the Buyer, the costs of delivery are in addition to the Price and for the Buyer's account.
- 4.3 The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and storage.
- 4.4 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of these terms and conditions.
- 4.5 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.6 The failure of the Seller to deliver shall not entitle either party to treat the contract as repudiated.
- 4.7 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

5. Risk

- 5.1 Risk for the Goods passes to the Buyer on delivery, irrespective of the fact that the Seller may still retain ownership.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

6. Title

- 6.1 The Seller and Buyer agree that ownership of the Goods shall not pass until:
- (a) the Buyer has paid all amounts owing for the particular Goods; and
- (b) the Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts at the time between the Seller and the Buyer.

7. Personal Property Securities Act 1999 ("PPSA")

- 7.1 The Buyer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods previously supplied by the Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer.
- 7.2 The Buyer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) that the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged;
- (c) not register a financing change statement or a change demand without the prior written consent of the Seller; and
- (d) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 7.3 The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 7.4 The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 7.5 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 7.6 The Buyer shall unconditionally ratify any actions taken by the Seller under clauses 7.1 to 7.5.

8. Buyer's Disclaimer

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- 8.1 The Buyer disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any misrepresentation made to the Buyer by or on behalf of the Seller, and the Buyer acknowledges that the Goods are bought relying solely upon the Buyer's skill and judgement.
- 9. Defects**
- 9.1 The Buyer shall be deemed to have inspected the Goods, within 3 Working Days of the date of delivery, and shall within those 3 Working Days of the date of delivery (time being of the essence) notify and provide evidence to the Seller in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description, order or quote. In the event of giving such written notice, the Buyer shall then, if required in writing by the Seller provide the Seller with an opportunity to inspect the Goods subject to any alleged defect, damage or non-compliance with the description, order or quote, by delivering them, at the Buyer's cost, to the Seller's warehouse (Auckland), within 10 Working Days of the date of written request. If the Buyer fails to comply with any of these provisions the Goods shall be presumed to be free from defect, shortage in quantity, damage or failure to comply with the description, order or quote. For defective or damaged Goods or non-compliance with the description, order or quote, whether or not the Goods have been manufactured by the Seller, the Seller's liability is limited to either (at the Seller's sole discretion) replacing the Goods or repairing the Goods. For the avoidance of doubt, in such event, the Seller shall not however be responsible for any costs of removal, disassembly or re-installation or the like of such Goods. Equally the Seller shall not be responsible for any loss or damage caused by such Goods, or whether caused as a direct or indirect result of removal, disassembly, re-installation, replacement or repair of the Goods or howsoever arising.
- 9.2 No Goods shall be accepted for return except in accordance with 9.1 above.
- 10. Warranty**
- 10.1 For Goods not manufactured by the Seller, the warranty relating to the Goods shall be the warranty provided by the manufacturer of the Goods at the time and the Buyer accepts that warranty in place of any express or implicit warranty from the Seller. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty in relation to such Goods.
- 10.2 The validity of the warranty shall be entirely conditional upon the Buyer or the Buyer's purchaser of the specific Goods having correctly and accurately registered their ownership and location details of the specific Goods on the Seller's website (correctly completing all information required by the Seller), at the time of the event leading to the warranty claim.
- 10.3 To the extent permitted by statute, no warranty is given by the Seller as to the quality or suitability of Goods for any purpose and any implied warranty, is expressly excluded. Under no circumstances shall the Seller be responsible for any costs of removal, disassembly or re-installation or the like of any defective or damaged Goods or where the Goods are subject to non-compliance with the description, order or quote. Equally the Seller shall not be responsible for any loss or damage caused by the defective or damaged Goods, or whether caused as a direct or indirect result of removal, disassembly, re-installation, replacement or repair of the Goods or howsoever arising.
- 11. Fair Trading Act 1986**
- 11.1 Sections 9, 12A and 13 of the Fair Trading Act 1986 shall not apply.
- 12. Consumer Guarantees Act 1993**
- 12.1 If the Buyer is acquiring Goods or Services for the purposes of a trade or business, the Buyer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods or Services by the Seller to the Buyer.
- 13. Intellectual Property**
- 13.1 Where the Seller has designed, drawn or written Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
- 13.2 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order.
- 14. Default & Consequences of Default**
- 14.1 Interest on overdue invoices and other amounts owing shall accrue from the date when payment becomes due daily until the date of payment at a rate equal to 15% per annum, and such interest shall compound monthly at such a rate after as well as before any judgement.
- 14.2 If the Buyer defaults in payment of any invoice or other amount when due, the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 14.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause. Equally, except to the extent that ownership of the Goods has passed from the Seller to the Buyer, the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods.
- 14.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies, and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator, administrator or similar person is appointed in respect of the Buyer or any asset of the Buyer.
- 15. Cancellation**
- 15.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 15.2 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.
- 16. Privacy Act 1993**
- 16.1 The Buyer and any Guarantor/s authorise the Seller to:
- (a) collect, retain and use any information about the Buyer and Guarantor, for the purpose of assessing the Buyer's and Guarantor's creditworthiness or marketing products and services to the Buyer;
 - (b) collect, retain and use data obtained from GPS tracking, network based geolocation technologies and data collection tools attached to Goods to monitor the real-time location of Goods, operational hours, assisting with preventative maintenance and improving operational efficiencies; and
 - (c) to disclose information about the Buyer and Guarantor, whether collected by the Seller from the Buyer or Guarantor directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Buyer or Guarantor.
- 16.2 Where the Buyer and Guarantor/s is an individual the authorities under (clause 16.1) are authorities or consents for the purposes of the Privacy Act 1993.
- 16.3 The Buyer and Guarantor/s shall have the right to request the Seller for a copy of the information about the Buyer and Guarantor/s retained by the Seller and the right to request the Seller to correct any incorrect information about the Buyer and Guarantor/s held by the Seller.
- 17. General**
- 17.1 If any provision of these terms and conditions is found to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.



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- 17.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 17.4 Notwithstanding any contrary provision, the liability of the Seller, whether in contract or pursuant to any cancellation of a contract or in tort or otherwise, in respect of all claims or loss, damage or injury, howsoever arising, shall be limited to damages and shall not in aggregate exceed the Price of the Goods in question.
- 17.5 The Buyer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller.
- 17.6 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change.
- 17.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party. This provision shall not however release the Buyer from the obligation to pay any amounts then due to the Seller.
- 17.8 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.