

## TERMS AND CONDITIONS OF PURCHASE

### 1. INTERPRETATION

In these Terms and Conditions of Purchase:

"**Agreement**" means this agreement for the purchase of Goods by Kaeser from the Supplier.

"**Kaeser**" means Kaeser Compressors Australia Pty Ltd and its contractors successors and assigns.

"**Goods**" means the Goods ordered by Kaeser from the Supplier.

"**Supplier**" means the vendor of the Goods.

"**Terms**" means these terms and conditions of purchase.

"**GST**" means any consumption tax imposed by government, whether at point of supply or at some other specified occurrence, by whatever name, and includes (without limitation) a Goods and Services Tax, a broad based consumption or indirect tax and value-added tax.

### 2. PURCHASE AND SUPPLY

2.1 Kaeser offers to purchase the Goods from the Supplier on these Terms.

2.2 The Supplier agrees to supply the Goods on the basis of these Terms free from any rights of third parties.

2.3 Unless otherwise agreed in writing by Kaeser, these Terms apply exclusively to every contract for the purchase of Goods from the Supplier and cannot be varied or supplanted by any other terms or conditions.

### 3. PRICES

3.1 Unless otherwise agreed between the Supplier and Kaeser in writing:-

(a) prices quoted by the Supplier are inclusive of GST and other duties and imports, insurance and transportation and delivery charges;

(b) Quotations made by the Supplier to Kaeser are valid from the date of the quote until such time as Kaeser may place an order.

(c) The prices charged shall be as agreed by Kaeser at the time Kaeser's order for the Goods is placed and may not be increased between the date of Kaeser's order and delivery of the Goods for any reason whatsoever.

### 4. PAYMENT

4.1 Kaeser will pay for the Goods at the end of the calendar month following the calendar month during which all the Goods were supplied unless otherwise agreed in writing by the parties, subject to the Supplier providing Kaeser with an invoice.

4.2 The Supplier is not entitled to interest on unpaid monies, or for any other costs associated with recovery from Kaeser for unpaid monies.

4.3 If partial delivery of the Goods ordered are made by the Supplier, Kaeser is not required to pay for any of the Goods until all Goods are received, in accordance with clause 4.1.

### 5. DELIVERY

5.1 The Supplier agrees to deliver the Goods to Kaeser.

5.2 Goods are deemed delivered on the actual date of delivery to Kaeser.

5.3 Goods are to be delivered to the address specified by Kaeser on its order form, or as otherwise directed by Kaeser in writing.

5.4 The Supplier must deliver the Goods on the agreed date (if any). If there is no agreed time specified, the Goods must be delivered within a reasonable time.

5.5 Goods must be contained and packaged to ensure their safety during transport and delivery.

### 6. CANCELLATION

Kaeser may cancel an order at any time up until delivery without any liability.

### 7. PROPERTY

Property in the Goods will pass to Kaeser on delivery of the Goods.

### 8. RISK

The risk in the Goods and all insurance responsibility for theft, damage or otherwise remains with the Supplier up until the time of delivery of the Goods to Kaeser.

### 9. LIABILITY

9.1 The Supplier is liable for any direct, indirect or consequential losses or expenses suffered by Kaeser or any third party arising out of the Agreement or the use of the Goods howsoever caused, including, but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

9.2 The Supplier is liable for any loss or damage suffered by Kaeser or any third party where the Supplier has failed to meet any delivery date, or cancels or suspends the supply of Goods, including, but not limited to loss of turnovers, profits, business or good will or any liability to any other party.

### 10. CONFORMITY OF GOODS

10.1 The Supplier shall deliver Goods that are of the quantity, quality and description detailed in the order.

10.2 Except where the parties have agreed otherwise in writing, the Goods do not conform with the order unless they:-

(a) are fit for the purposes for which Goods of the same description ought to ordinarily be used;

(b) are fit for any particular purpose expressly or impliedly made known to the Supplier at the time of the order;

(c) possess the qualities of Goods which the Supplier has held out to Kaeser as a sample or model; and

(d) are contained or packaged in the manner usual for such Goods or, where there is no such manner, in a manner to preserve and protect the Goods.

10.3 If, subsequent to delivery and notwithstanding the passing of risk, it is determined that the Goods do not conform with their description, the Supplier remains liable for the non-conformity which existed at the time when the risk passed to Kaeser.

10.4 The Supplier is liable for any non-conformity which occurs after delivery and the passing of risk which arises due to a breach of any of its obligations, including a breach of the warranty in these Terms.

### 11. WARRANTY AND GUARANTEE

11.1 The Supplier warrants that the Goods conform in accordance with clause 10 to any pictures, descriptions, specifications or other materials provided to Kaeser. The Supplier is liable for minor differences.

11.2 The Supplier warrants the conformity of the Goods for a period of 12 months from the date of delivery of the Goods to Kaeser.

11.3 The Supplier warrants to provide a full cash back guarantee and shall include reimbursement for any costs associated with the re-supply of the Goods of Kaeser.

### 12. PRIVACY

12.1 Kaeser is bound by the Privacy Amendment (Private Sector) Act 2000 and takes steps to ensure that all personal information obtained in connection with the Supplier will be appropriately collected, stored, used, disclosed, transferred and destroyed in accordance with the National Privacy Principles.

12.2 Kaeser requires that the Supplier comply with the National Privacy Principles in connection with any personal information supplied to it by Kaeser in connection with any agreement between the Supplier and Kaeser.

### 13. GOVERNING LAW

The laws of Victoria from time to time govern these Terms and the parties agree to the exclusive jurisdiction of the courts and

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tribunals of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those courts and tribunals.

### **14. GENERAL**

- 14.1 Failure by Kaeser to enforce any of these Terms shall not be construed as a waiver of any of Kaeser's rights.
- 14.2 If any term or condition is unenforceable it shall be read down so as to be enforceable or, if it cannot be read down, the term or condition shall be severed from these Terms without affecting the enforceability of the remaining Terms.
- 14.3 Nothing in these Terms shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, right or remedy implied pursuant to the Trade Practices Act 1974 or similar legislation or common law.

### **15. SPECIAL CONDITIONS**

- 15.1 If any of the Special Conditions contained in this Agreement are inconsistent with the Terms, the Special Conditions will prevail.
- 15.2 Special Conditions apply only in respect of this Agreement and do not form part of the Terms for future agreements unless agreed in writing by the Parties.