

# **Terms and Conditions of Sale: KAESER KOMPRESSOREN (THAILAND) LTD.**

## **1. General**

1.1 These terms and conditions of Sales (hereinafter referred to as the "Terms") shall apply to all contracts (hereinafter referred to as the "Agreements" or the "Agreement") for sales in the Kingdom of Thailand by KAESER KOMPRESSOREN (THAILAND) LTD (hereinafter referred to as the "Company") of articles and products manufactured or distributed by the Company and all accessories thereto (hereinafter collectively referred to as the "Goods or Services" and individually referred to as the "Goods" or the "Services") and any qualification or variation thereof by an employee or agent of the Company shall be invalid/void unless agreed to in writing by the Company's authorized signatory.

1.2 Unless otherwise agreed by the Company in writing, the Terms apply exclusively to every Agreement with the customer (hereinafter referred to as the "Customer" and cannot be varied/revise/amended or supplanted by any other terms or conditions (including but not limited to the Customer's terms and conditions of purchase, those terms or conditions contained in purchase orders, quotations, invitations for bidding/tender, or other documents).

1.3 While each of the Agreements governed by the Terms is considered a separate contract from each other, in the event that the Customer commits any breach of any provision(s) of any Agreement(s) under these Terms or any other contract/juristic act with the Company being a party, the Company reserves every right to suspend its performance of the obligations under all Agreements under these Terms (even those of any Agreement where there is no breach of contract on the part of the Customer) until the Customer rectifies the aforementioned breach to the reasonable satisfaction of the Company.

## **2. Prices and terms of payment**

2.1 Any prices quoted by the Company to the Customer for the Goods or Services is valid for thirty (30) days from an issuance date and is subject to the Customer's entering in the Agreement and accepting these Terms in writing.

2.2 The prices quoted are exclusive of VAT, which will be added to the invoice at the rate then current and appropriate to the transaction.

2.3 Where there is any change in the costs incurred by the Company in relation the Goods or Services, the Company may increase its price for the Goods or Services on any Agreement to take account of any such change.

2.4 The Customer is liable for all bank fees and charges associated with the payment of the Company's invoices to the extent that the Company receives a full payment of the amount in its bank account.

2.5 Payment for the Products shall be strictly in accordance with the terms stated at time of tender or, lacking tender, the terms quoted on invoice.

2.6 At any time, the Company has the right to request the Customer to furnish the Company with evidence of the Customer's financial standing/situation to the reasonable satisfaction of the Company. In the event that the Company reasonably deems that the Customer's financial standing/situation has deteriorated or changed in whatever aspect, regardless of the payment terms the Company may request the Customer to provide the Company with (i) the security for the unpaid portion of a price of the Goods or Services to the reasonable satisfaction of the Company or (ii) the upfront payment of the unpaid portion of a price of the Goods or Services as the Company deems appropriate in light of the perceived financial standing/situation of the Customer.

2.7 The Company reserves the right to appropriate any payment or part payments of an invoice in settlement of the balance then outstanding under any former invoice rendered to the same Customer, and cash discounts shall only be allowed to the Customer if all prior claims arising out of any earlier invoice shall have been fully satisfied.

2.8 A payment term shall be specified in Company's quotation. Without the payment term in Company's quotation, the payment term shall be specified in an invoice. If both the quotation and the invoice do not specify the payment term, the payment term shall be thirty (30) days from the date of the delivery/supply of the Goods or the Services in question.

2.9 In the event that the Customer fails to make any payment of any amount due and payable to the Company under any Agreement to the Company, the Company shall be entitled to charge the Customer the interest on the outstanding sum or balance owing on the invoice at the rate of 1.5% per month computing from each due date until the date of actual payment. The Company reserves the right to charge the default interest upon Customer's late payment of any amount under the Agreement without the need to make any further reservation upon Company's receipt of each late payment of the amount.

2.10 In the event that the Customer fails to make any payment of any amount due and payable to the Company under the Agreement, to the fullest extent allowed by law the Customer allows the Company to charge the Customer for all expenses and costs (including legal costs and disbursements on an indemnity basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due.

2.11 In the event that the Customer fails to make any payment of any amount due and payable to the Company under any Agreement(s) to the Company or fails to comply with any provision of these Terms with respect to any Agreement(s) or any provision of any Agreement(s), the Company may terminate every Agreement under these Terms forthwith and claim for the monetary damages from the Customer on an actual basis.

## **3. Carriage**

3.1 The Products shall be consigned at the most economical rate at the option of the Company by parcel post, road or rail, or carriage paid to the Customer provided that cost incurred at Customer request (e.g. carriage by passenger train or other transport) shall be charged to the Customer.

3.2 The Company shall not be responsible for damage to any of the Goods or loss of the Goods or part thereof in transit unless the Customer gives notice of a claim both to the Company and to the carrier within the following deadlines.

(i) in the case of damage within three (3) days after receipt of the Goods under the condition that the Customer has to return the damaged Goods to the Company in their original packaging; and

(ii) in the case of loss, within ten (10) days after receipt of despatch note.

## **4. Delivery**

4.1 Unless otherwise expressly agreed in writing by the Company time shall not be of the essence in the performance of any Agreement/order under the condition that in the event of a delay of delivery being requested/initiated by the Customer, the Customer agrees to be responsible for all direct and indirect expenses/costs arising from, arising out of and/or arising due to the delay including but not limited to maintenance, storage and insurance expenses.

4.2 Should delivery to the Customer be prevented or delayed by acts of God, war, civil commotion, government orders, strikes, lock-outs, fires, accident, shortage of labour, materials, fuel, power or transport, or any other force majeure or other cause whatsoever beyond the Company's control, the Company shall be entitled to an extension of delivery time until the operation of the cause preventing or delaying the same has ceased. Provided that if deliveries are wholly suspended for a period of six (6) months the Company may be written notice cancel the order or so much thereof as shall remain unperformed.

4.3 Upon delivery of the Goods to the Customer, the Customer agrees to inspect and test the Goods forthwith. In the event that the Customer finds any defect(s) in the Goods, the Customer agrees to notify the Company in writing of such defect(s) within fifteen (15) days from the date of delivery. If the aforementioned period of fifteen (15) days passes without any notice being served to the Company, it shall be deemed that the Goods are delivered to the Customer without any defect(s) whatsoever and the Company will not be liable for any defects in such delivered Goods after the expiration of the aforementioned period.

4.4 Clause 4.3 shall apply to any supply of the Services mutatis mutandis under the condition that the period of fifteen (15) days shall commence from a date of completion of the Services.

## **5. Alteration of Designs and Specifications**

The Company reserves the right at any time to vary or alter any of the designs and specifications of the Goods or Services without notice.

## **6. Retention of title**

6.1 The title/ownership in the Goods, the subject of the Agreement, shall notwithstanding delivery to the Customer, not pass through the Customer until such time as all sums due by the Customer to the Company on that Agreement/order or any other Agreements/orders at that time is duly paid in full. In the event of Products being intermixed with other goods not the property of the Company, the Customer shall hold the Goods of such inter-mixing upon trust (in trust) for (for and on behalf of) the Company until all such sums aforesaid have been paid and shall deliver the same to the Company upon demand. Without prejudice to the foregoing, the risk of any loss or damage or deterioration to the Goods from any cause whatsoever shall be borne by the Customer from the time of delivery.

The Goods sold shall remain the property of the Company as the seller, until the total payment of the price is made by the Customer. The retention of title/ownership in the Goods continues to exist even if an amount relating to only a part of the supply is still due at the closing of the accounts. To this end, the Customer acknowledges that the Company's accounting records will fully prove among themselves. In the case of payment by bank transfer, checks, bills, drafts or bank receipts, the Goods remain the property (under the title/ownership) of the Company until the final definitive completion of checks, bills, drafts and bank receipts are duly cashed and a fund becomes available to the Company in full. The title/ownership passes to the Customer only on the full payment of the price of Goods. During the time in which the retention of title is in force, the Customer is obliged to keep the Goods, responding that they are in good condition even in the event of theft, fire or other unforeseeable circumstances, while also providing the related insurance coverage. The Customer undertakes to make good use of the Goods according to the destination and not to transfer their ownership or enjoyment for any reason, nor to remove and move the Goods to a location other than that of its original installation. The Customer authorizes the Company as an owner/co-owner to inspect or have inspected by his staff or his outside contractor at any time the Goods sold.

In the event that the aforementioned Goods were subject to conservative or executive acts by third parties or by facts that could compromise the rights of the Company, the Customer undertakes to make known to a court, an official receiver, an executing officer, a business collateral enforcer, a police or other investigator, a prosecutor, and/or any other similar officers that the Goods are the property of the Company. The Customer will lend itself to the formalities of registration, transcription or other deeds that the Company deems necessary or useful by virtue of current or future laws for the greater validity of this retention of title/ownership over the Goods. The related costs will be borne by the Customer. If, in the event of the union or admixture of the Company's Goods with another thing owned by a third party, this thing should be considered as main, the co-ownership of the thing passes to the Company in relation to the invoiced value of the Goods supplied by the Company.

6.2 Clause 6.1 shall apply to the Services supplied by the Company under these Terms mutatis mutandis to the full extent that it is not contrary to the nature of the Services.

## 7. Warranties and Limitations of Liability

7.1 Subject to payment by the Customer of all sums due to the Company under the applicable Agreement(s) and Customer's duly compliance with the Terms, during the warranty period (as elaborated in Clause 7.2), the Company agrees to maintain the Goods and make good any defects and imperfections therein at its own expense insofar as the Company determines that such defect(s) arises from the faulty materials or workmanship. At its sole and absolute discretion, the Company may choose to replace any Goods or any part thereof with the non-defective Good(s) or any non-defective part.

7.2 Unless the Company explicitly sets forth or elaborates the warranty period otherwise in a quotation or any other document, the following warranty condition apply:

- (i) the warranty for the Goods that are the new products shall be valid for twelve (12) months from the date of startup (first use) of the Goods or thirteen (13) months from the date of delivery, whichever ends earlier, as per the Company's warranty conditions;
- (ii) the warranty for the Goods that are the second hand products manufactured by the Company shall be valid for three (3) months limited warranty from the date of delivery and shall be the limited (not full) warranty; and
- (iii) the warranty for the Goods that are the genuine spare parts manufactured by the Company and sold by the Company directly shall be valid for three (3) months limited warranty from the date of delivery.

7.3 The warranty shall not cover the following events/circumstances:

- (i) any repair of any damage caused by accident, danger, misuse of the Goods or the damage caused by the Customer's use or replacement of spare parts that were not supplied by the Company;
- (ii) the Goods have been repaired or altered, tampered with, installed or serviced by any third party without a written consent from the Company; (iii) Customer's failure to adjust the equipment of the Goods in accordance with the Company's instruction;
- (iv) the replacement of consumable parts, normal wear and tear and vandalism; and
- (v) any event(s)/circumstance(s) exempt/excluded by the Normal Warranty conditions provided by the Company (if any).

In the case of defects becoming apparent in any Goods located outside the Kingdom of Thailand the liability of the Company hereunder is restricted to the supply of spare parts only.

7.4 Any repair work outside the scope or the period of the warranty shall be charged in cash on the spot immediately upon on delivery/completion of the Goods or the Services.

7.5 To the fullest extent allowed by law, the Company shall not be liable for any indirect or consequential damage or loss, including but not limited to loss of profit, loss of use, loss of contracts, loss of business, loss of customers, loss of good will, the contractual liabilities of others, which may be suffered by the Customer or a third party in connection with the applicable Agreement(s)/order(s) even if the Company has been advised of the possibility of such damage or loss or the Company has foreseen the possibility of such damage or loss. Where the Company and others have jointly caused the Customer to suffer loss or damage in connection with the Agreement(s)/order(s), Company's liability will be limited to the extent that the Company has caused or contributed to such loss or damage under the condition that the Company shall never be liable for damage caused by others. To the fullest extent allowed by law, the liability of the Company under each applicable Agreement/order shall be limited to 30% (thirty percent) of the amount of a price of the Goods or the Services that the Company has already received under that applicable Agreement/order, exclusive of VAT. To the fullest extent allowed by law, the Company shall not be liable for any net contribution, and/or any saving.

7.6 The Customer shall not, in selling any Goods supplied by the Company make any representation or give any warranty other than those contained in the Terms.

## 8. Export

The Customer agrees not to distribute/sell the Goods, in whole or in part, outside the Kingdom of Thailand without the prior written consent of the Company. In addition, the Customer agrees not to provide or distribute/sell the Goods to any third party who the Customer knows or has a reason to know that such party will or is likely to export or re-export them, in whole or in part, directly or indirectly outside the Kingdom of Thailand. The Customer agrees to indemnify, defend and hold the Company harmless from and/or against any claims, damages or liabilities resulting from the breach of these non-export obligations.

## 9. Markings

The Customer shall not in any way alter, deface or remove any letters, numbers or other marks or markings which appear on or are attached to the Goods supplied to him by the Company and shall use his best endeavours to ensure that same are not altered, defaced or removed by any other person, firm or company. Failure to comply with this condition relieves Company from an obligation to provide the warranty services to the Customer.

## 10. Contingent Liability

Customer's purchase orders are accepted only on the strict understanding that the Company's responsibility for any claim connected with the Goods supplied by the Company shall be

limited to (i) delivery of any missing quantity of the Goods; (ii) delivery of the non-defective Goods to replace any previously delivered defective Goods; (iii) delivery the Goods conforming to the specifications to replace the previously delivered Goods that are not conforming to the specifications; and/or (iv) refund of the price of the defective/nonconforming Goods to the Customer as the Company deems appropriate. The aforementioned remedy shall be the Company's sole and exclusive remedy for such shortage, damage or discrepancy in the Goods. For avoidance of doubt, the Customer may claim for Company's responsibility (as per Clause 10 (i) – (iv)) if only the Customer has already duly complied with the notification condition in Clause 4.3.

Any recommendation made by the Company relating to the use of the Goods is given in good faith, but it is to the Customer to satisfy himself as to the suitability of the Goods for his own particular purpose and the Company gives no warranty as to the fitness of the Products for any particular purpose.

## 11. Delivery and Installation

Delivery, if undertaken by the Company is done so on condition that adequate labour and facilities will be made available by Customer at Customer's expense to carry out prompt and safe unloading at the place at which delivery is requested by the Customer and that it will not be necessary to dismantle the Goods or any part or parts thereof in order to install them in the place requested by Customer.

## 12. Customer cancellation default, penalties and irrevocability

For avoidance of doubt, an application of Clause 1.3 means that in the event of default by the Customer, the Company, after regular formal notice, also verbal, as regards the Goods not yet supplied, may refuse further deliveries and /or supplies regardless of whether those undelivered Goods are in the same Agreement/order with the Goods whose price has not been paid or are in the different Agreement/order. In the event of termination of any Agreement under the Terms in accordance with either Clause 2.11 or otherwise, in addition to paying the damages to the Company on an actual basis, the Customer will be required to pay the Company:

- (i) a penalty of 40% (forty percent) of a price of the Goods or the Services that are the standard products; and
- (ii) a penalty of 100% (one hundred percent) of a price of the Goods or the Services that are special customized products, which is not easy for the Company to sell elsewhere.

For avoidance of doubt, once any Agreement/order is accepted and entered into by the Company, the Customer may not terminate/cancel such Agreement/order without a prior explicit written consent of the Company.

## 13. Applicable law and place of jurisdiction

All Agreements/orders accepted and entered into by the Company hereunder and any dispute or litigation arising therefrom shall be governed by the laws of the Kingdom of Thailand.