

AIRCARE COMPRESSOR SERVICES LIMITED



TERMS AND CONDITIONS OF SALE/SERVICES

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Applicable Law	means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;
Bribery Laws	means the Bribery Act 2010 and all Applicable Laws in connection with bribery or anti-corruption and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday;
Conditions	means the Supplier's terms and conditions of sale set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to the Goods, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
Contract	means the agreement between the Supplier and the Customer for the sale and purchase of the Goods and/or Services incorporating these Conditions and the Order, and including all its schedules, attachments, annexures and statements of work;
Customer	means the named party in the Contract which has agreed to purchase the Goods and/or Services from the Supplier and whose details are set out in the Order;
Documentation	means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Goods and/or Services;
Force Majeure	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;
Goods	means the goods and related accessories, spare parts and Documentation and other physical material set out in the Order or understood by the

parties to be included in the Goods and to be supplied by the Supplier to the Customer in accordance with the Contract;

Intellectual Property Rights

means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in software, rights in goodwill, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:

- (a) whether registered or not
- (b) including any applications to protect or register such rights
- (c) including all renewals and extensions of such rights or applications
- (d) whether vested, contingent or future
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing;

Location

means the address or addresses for delivery of the Goods and/or Services as set out in the Order;

Order

means an order for the Goods and/or Services from the Supplier placed by the Customer;

Price

has the meaning given in clause 3.1;

Services

means the Services to be provided under the Contract;

Specification

means the description, any samples, or Documentation provided for the Goods and their packaging set out or referred to in the Contract;

Supplier

means Aircare Compressor Services Limited whose registered office is at Glebe House, Crucible Road, Corby, Northamptonshire, NN17 1TS and whose Company registration number is 02648531 The Company trades from premises at Glebe House, Crucible Road, Corby, Northamptonshire, NN17 1TS and Unit 8 Sycamore House, Engine Lane, Moorgreen Industrial Park, Newthorpe, Nottingham, NG16 3QU.

VAT

means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods; and

Warranty

has the meaning given in clause 9.1

1.2 In these Conditions, unless the context requires otherwise:

1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);

- 1.2.2 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.2.3 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.2.10 a reference to legislation is a reference to that legislation as in force at the date of the Contract;
- 1.2.11 a reference to legislation includes all subordinate legislation made as at the date of the Contract; and
- 1.2.12 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2 Application of these conditions

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees.
- 2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Supplier and the Customer respectively.
- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase the Goods and/or Services subject to the Contract including these Conditions.
- 2.5 If the Supplier is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.

3 Price

- 3.1 The price for the Goods and/or Services shall be as set out in the Order.
- 3.2 The Prices are exclusive of:
 - 3.2.1 *packaging, delivery, insurance, shipping carriage, and all other related charges or taxes or describe relevant elements of the goods which are not included in the standard price which shall be charged in addition at the Supplier's standard rates, and*
 - 3.2.2 VAT (or equivalent sales tax).
- 3.3 The Supplier reserves the right to amend/change price and tariff to incorporate any additional cost of import, export and customs charges post Brexit.

3.4 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.

4 Payment

4.1 The Supplier shall invoice the Customer for the Goods and/or Services, partially or in full, at any time following acceptance of the Order.

4.2 The Customer shall pay all invoices:

4.2.1 in full without deduction or set-off, in cleared funds within 30 Business Days of the date of each invoice; and

4.2.2 to the bank account nominated by the Supplier.

4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:

4.3.1 the Supplier may, without limiting its other rights, charge interest on such sums at 5% a year above the base rate of HSBC Bank plc from time to time in force, and

4.3.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

4.3.3 Credit and debit card payments will be subject to a 1.8% administration fee.

4.4 In the event that the Supplier should attend the customer's site and is unable to commence work because the site is not safe or accessible, the Supplier reserves the right to charge the customer for wasted time and storage of equipment.

4.5 The Supplier will not be responsible for mistakes arising from human error.

5 Credit limit

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

6 Delivery

6.1 The Goods and/or Services shall be delivered by the Supplier, or its nominated carrier, to the Location specified in the Order.

6.2 The Goods and/or Services shall be deemed delivered on arrival only of the Goods and/or Services at the Location by the Supplier or its nominated carrier.

6.3 The Supplier may deliver the Goods in instalments. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6.4 The Customer shall not be entitled to reject a delivery of the Goods on the basis that an incorrect volume of the Goods has been supplied.

6.5 The Goods may be delivered by instalments if specified in the Order. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6.6 Delivery of the Goods shall be accompanied by a delivery note stating:

6.6.1 the date of the Order;

6.6.2 the product numbers, type and quantity of the Goods in the consignment; and

6.6.3 any special handling instructions.

6.7 Time of delivery is not of the essence. The Supplier shall use its reasonable endeavours to meet delivery dates but such dates are indicative only.

6.8 The Supplier shall not be liable for any delay in or failure of delivery caused by:

- 6.8.1 the Customer's failure to make the Location available;
- 6.8.2 the Customer's failure to prepare the Location;
- 6.8.3 the Customer's failure to provide the Supplier with adequate instructions for delivery and installation;
- 6.8.4 Force Majeure;
- 6.8.5 global supplies issues beyond the Supplier's control.

6.9 If the Customer fails to accept delivery of the Goods the Supplier shall store and insure the Goods pending delivery, and the Customer shall pay all reasonable storage and insurance charges.

7 Risk

Risk in the Goods shall pass to the Customer on delivery.

8 Title

8.1 Title to the Goods and/or Services shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods and/or Services.

8.2 Until title to the Goods and/or Services has passed to the Customer, the Customer shall:

- 8.2.1 hold the Goods as bailee for the Supplier;
- 8.2.2 store the Goods separately from all other material in the Customer's possession;
- 8.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
- 8.2.4 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;
- 8.2.5 ensure that the Goods are clearly identifiable as belonging to the Supplier;
- 8.2.6 not remove or alter any mark on or packaging of the Goods;
- 8.2.7 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 14.1.1 to 14.1.4 or 14.2.1;
- 8.2.8 on reasonable notice permit the Supplier to inspect the Goods and/or Services during the Customer's normal business hours and provide the Supplier with such information concerning the Goods and/or Services as the Supplier may request from time to time.

9 Warranty

9.1.1 The Supplier warrants that the Goods and/or Services shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

9.2 The Customer warrants that it has provided the Supplier in writing with all relevant, full and accurate information as to the Customer's business and needs.

10 Indemnity and insurance

10.1 The Customer shall indemnify the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses which the Supplier may suffer or incur directly or indirectly from the Customer's breach of any of its obligations under the Contract.

10.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Customer shall supply (so far as is reasonable) evidence of the maintenance of the insurance and all of its terms from time to time applicable.

11 Intellectual property rights

11.1 The Customer shall indemnify the Supplier from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that use or possession of the Goods infringes the Intellectual Property Rights of any third party, provided that the Buyer shall have no such liability if the Supplier:

11.1.1 does not notify the Customer in writing setting out full details of any Claim of which it has notice as soon as is reasonably possible;

11.1.2 makes any admission of liability or agrees any settlement or compromise of the relevant Claim without the prior written consent of the Supplier;

11.1.3 does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the Claim at its sole discretion;

11.1.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the Claim;

11.1.5 does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer;

11.1.6 uses the Goods and/or Services in combination with any other goods or services, which without such combination, no Claim could or would have been made.

11.2 If any Claim is made or is reasonably likely to be made, the Supplier may at its option:

11.2.1 procure for the Customer the right to continue using and possessing the relevant Goods and/or Services; or

11.2.2 modify or replace the infringing part of the Goods and/or Services so as to avoid the infringement or alleged infringement, provided the Goods and/or Services remain in material conformance to their Specification.

11.3 The Supplier's obligations under clause 11.1 shall not apply to Goods and/or Services modified or used by the Customer other than in accordance with the Contract or the Supplier's instructions. The Customer shall indemnify the Supplier against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by the Supplier in connection with any claim arising from such modification or use.

12 Confidentiality and announcements

12.1 The Customer shall keep confidential all Confidential Information of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

12.1.1 any information which was in the public domain at the date of the Contract;

12.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

12.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier; or

12.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

12.2 This clause 12.2 shall remain in force for a period of 5 years from the date of the Contract.

12.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

13 Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so.

14 Termination

14.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:

- 14.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;
- 14.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 Business Days of receiving written notice of such breach;
- 14.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 30 days after the date that the Supplier has given notification to the Customer that the payment is overdue; or
- 14.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

14.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:

- 14.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- 14.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
- 14.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- 14.2.4 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
- 14.2.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
- 14.2.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
- 14.2.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- 14.2.8 has a resolution passed for its winding up;
- 14.2.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- 14.2.10 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 days of that procedure being commenced;
- 14.2.11 has a freezing order made against it;
- 14.2.12 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;

15 Cumulative remedies

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

16 Time

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

17 Further assurance

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

18 Entire agreement

18.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

18.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contractor any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

18.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

19 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.

20 Set-off

20.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.

20.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

21 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

22 Equitable relief

The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

23 Severance

23.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

23.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

24 Waiver

24.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

24.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

25 Compliance with law

The Customer shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

26 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail to the extent of the conflict.

27 Costs and expenses

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

28 Third party rights

28.1 Except as expressly provided for in clause 28.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

28.2 Any Affiliate of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

29 Governing law

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

30 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).