

# Terms and Conditions of Service

## I. GENERAL

This document is an offer by Kaeser Compressors, Inc., of Fredericksburg, Virginia ("Kaeser Compressors"), to provide repair and maintenance services along with the maintenance and repair parts that are identified in this document ("Services") to the purchaser identified in this document ("Purchaser") in accordance with these terms and conditions of service ("Terms and Conditions"), is not an acceptance or confirmation of any offer made by Purchaser, and is expressly made conditional on Purchaser's assent to these Terms and Conditions. Kaeser Compressors objects to any additional or different terms or conditions contained in any request for quotation, request for proposal, purchase order or other document or communication previously or hereafter provided by Purchaser to Kaeser Compressors. No such additional or different terms or conditions will be of any force or effect, unless specifically agreed to by an executive officer of Kaeser Compressors in writing. These Terms and Conditions and the additional terms contained in this document, as supplemented by agreed-upon prices, quantities and shipping dates (collectively, the "Agreement"), shall be the entire agreement between Kaeser Compressors and Purchaser on the subject of the transactions described herein; and there are no conditions to this Agreement that are not expressed herein.

## II. PAYMENT

All invoices shall be paid within thirty (30) days after completion of services. If Purchaser fails to pay any invoice when due or if, in the judgment of Kaeser Compressors, the financial condition of Purchaser at any time prior to performance of services does not justify the extension of credit, then Kaeser Compressors may require payment in advance or otherwise modify the payment terms upon notice to Purchaser. All delays occasioned by acts of Purchaser shall be at the expense of Purchaser. Kaeser Compressors reserves the right to assess reasonable charges for its expenses resulting from such delays. All services shall be separately invoiced and paid for without regard to subsequent services. Interest at the rate of one and one-half percent (1 1/2%) per month or at the highest rate allowed by law, whichever is more, shall be charged to all overdue accounts. Purchaser will reimburse Kaeser Compressors for all costs and expenses (including attorneys' fees and the costs of bringing any action) incurred in collecting any amounts past due.

## III. WARRANTIES

Kaeser Compressors warrants all services performed by Kaeser Compressors shall be performed in a competent, workmanlike manner, and all replacement parts used by Kaeser Compressors in performing the services shall be free of defects in material and workmanship. Such warranties shall expire on the date that is ninety (90) days from date of service. In addition, the warranty period for any replacement Major Components used by Kaeser Compressors in performing the services shall be twelve (12) months from date of service. "Major Components" consist of SFC Drives, Air & Oil Coolers, Aftrends and Sigma Controllers; and except as otherwise provided above, any parts furnished by Kaeser in performing the services which are manufactured by others are not warranted by Kaeser, but shall carry the warranty (if any) provided by the manufacturer of such parts. Repair, replacement or refund (whichever Kaeser Compressors determines, in its sole discretion to provide) shall be Kaeser Compressors' sole obligation and Purchaser's exclusive remedy for any breach of the foregoing warranties. This exclusive remedy will not be deemed to have failed of its essential purpose so long as Kaeser is willing to provide repair, replacement or refund. Kaeser Compressors shall not be responsible for labor charges, loss or damage resulting from improper operation, maintenance or repairs made by personnel other than those authorized in writing by Kaeser Compressors.

THE EXPRESS WARRANTY CONTAINED IN THIS SECTION III IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED; AND KAESER COMPRESSORS EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

## IV. LIMITATION OF LIABILITY

THE REMEDIES OF THE PURCHASER SET FORTH HEREIN ARE EXCLUSIVE, AND KAESER COMPRESSORS' LIABILITY WITH RESPECT TO EQUIPMENT SOLD HEREUNDER SHALL BE LIMITED TO THE WARRANTY PROVIDED HEREIN AND, WITH RESPECT TO ANY BREACH OF ITS CONTRACT WITH PURCHASER, SHALL BE LIMITED TO THE CONTRACT PRICE OF EQUIPMENT THAT IS THE SUBJECT OF THE BREACH; PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT APPLY IN THE EVENT OF ANY ACT THAT CONSTITUTES GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY THE PARTY SUBJECT TO THE CLAIM FOR SUCH DAMAGES. PRIOR TO PURCHASER HAVING ANY RIGHT TO RECOVER DAMAGES (SUBJECT TO THE LIMITATIONS SET FORTH BELOW), KAESER COMPRESSORS SHALL HAVE THE RIGHT TO CORRECT ANY DEFECT

OR NON-CONFORMITY OF ANY EQUIPMENT SOLD HEREUNDER IN A REASONABLE TIME FRAME, AND IF KAESER COMPRESSORS DETERMINES THAT IT IS UNABLE OR UNWILLING TO CORRECT ANY SUCH DEFECT OR NON-CONFORMITY, THEREAFTER, PURCHASER MAY PURSUE THE ALTERNATIVE REMEDIES SET FORTH HEREIN. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR EXPENSES INCURRED BY THE OTHER PARTY, THE OTHER PARTY'S CUSTOMERS OR ANY THIRD PARTY, WHETHER ARISING FROM BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHER THEORIES OF LAW OR EQUITY, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF USE OF EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE FACILITIES OR SERVICES, DOWNTIME COSTS OR CLAIMS OF CUSTOMERS OR SUCH OTHER PARTY FOR SERVICE INTERRUPTION, OR ANY OTHER TYPES OF ECONOMIC LOSS WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED ON CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE.

## V. PRICES

All prices are quoted and payable in U.S. dollars. Quoted prices shall remain open for thirty (30) days' acceptance only. All orders are subject to acceptance by an authorized representative at Kaeser Compressors' plant. The prices quoted do not include any taxes. Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value added tax, duty, custom, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority on or measured by the transactions between Kaeser Compressors and Purchaser shall be paid by Purchaser in addition to the prices quoted or invoiced. In the event Kaeser Compressors is required to pay any such taxes or other charges, Purchaser shall reimburse Kaeser Compressors therefor on demand.

## VI. SUBMITTAL

Any design, manufacturing drawings or other information or materials submitted to Purchaser shall remain the sole and exclusive property of Kaeser Compressors and shall not be copied or communicated to any third party without the express prior written consent of Kaeser Compressors. Immediately upon termination of this Agreement, all such designs, drawings, information and materials, together with any and all copies thereof, shall be returned to Kaeser Compressors.

## VII. ENVIRONMENTAL AND SAFETY

Kaeser Compressors is an ISO 9001 and 14001 certified company. Kaeser Compressors safety procedures and work instructions are an integral part of these certifications. Kaeser Compressors will make every effort to perform our services in accordance with these procedures and work instructions in a method that is respectful to our environment. In addition, Kaeser Compressors will work with our customers and strive to abide by our customer's safety rules and procedures to create a safe environment when performing services. Special customer facility requirements must be communicated prior to service work commencing.

Since the compliance with the various federal, state and local laws and regulations concerning occupational health and safety and pollution are affected by the use, installation and operation of Equipment and other matters over which Kaeser has no control, Kaeser assumes no responsibility for compliance with those laws and regulations, whether by way of indemnity, warranty or otherwise.

## VIII. REMEDIES AND CANCELLATION

The rights and obligations of Kaeser Compressors and Purchaser shall be governed by the laws of the Commonwealth of Virginia (without reference to principles of conflicts of laws). If any provisions herein shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity of the remainder of the provisions herein. No accepted offer may be cancelled or altered by Purchaser except upon terms and conditions accepted by an executive officer of Kaeser Compressors in writing, and no changes to this document will be binding unless set forth in writing and manually signed by an executive officer of Kaeser Compressors.

## IX. WAIVER

Kaeser Compressors' failure at any time to enforce any of the provisions herein, or to require Purchaser's performance of any of the provisions herein, shall not be construed to be a waiver of such provisions.