

## TERMS AND CONDITIONS OF SERVICE

### 1. GENERAL

This document is an offer by Kaeser Compressors, Inc., of Fredericksburg, Virginia (“**Kaeser**”), to provide repair and maintenance services along with the maintenance and repair parts that are identified in this document (“**Services**”) to the Customer identified in this document (“**Customer**”) in accordance with these terms and conditions of service (“**Terms and Conditions**”), is not an acceptance or confirmation of any offer made by Customer, and is expressly made conditional on Customer’s assent to these Terms and Conditions. Kaeser 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 Customer to Kaeser. 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 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 and Customer on the subject of the transactions described herein; and there are no conditions to this Agreement that are not expressed herein.

### 2. REMEDIES AND APPLICABLE LAW

**These Terms and Conditions and any transaction based on them for the provision of Services by Kaeser to Customer shall be governed by the laws of the Commonwealth of Virginia (without reference to principles of conflicts of laws). THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER WILL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. ALL CAUSES OF ACTION AGAINST KAESER ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE PERFORMANCE WILL EXPIRE UNLESS BROUGHT WITHIN ONE YEAR OF TIME OF ACCRUAL THEREOF.**

### 3. PAYMENT

All invoices shall be paid within thirty (30) days after completion of Services. If Customer fails to pay any invoice when due or if, in the judgment of Kaeser, the financial condition of Customer at any time prior to performance of Services does not justify the extension of credit, then Kaeser may require payment in advance or otherwise modify the payment terms upon notice to Customer. All delays occasioned by acts of Customer shall be at the expense of Customer. Kaeser 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 ½ %) per month or at the highest rate allowed by law, whichever is more, shall be charged to all overdue accounts. Customer will reimburse Kaeser for all costs and expenses (including attorneys’ fees and the costs of bringing any action) incurred in collecting any amounts past due.

### 4. FORCE MAJEURE

A “**Force Majeure Event**” is a condition or event that is beyond the reasonable control of Kaeser, whether foreseeable or unforeseeable, foreseen or unforeseen, including, without limitation, severe weather, storm, flooding, hurricane, tornado, earthquakes, seismic disturbances, acts of God, acts or omissions of Customer, a breach, negligence, criminal misconduct or other act or omission of any third-party, climate change, natural disasters or other acts of God, fire or other insured or uninsured casualty, quarantines, epidemics, pandemics, disease, viruses, condemnation, strikes, slowdowns or other labor disputes, transportation interruptions, fires, explosions or other casualties, thefts, vandalism, riots or war, acts of terrorism, electrical power outages, labor shortage (including, without limitation, due to infection or fear of infection of a communicable disease), interruptions or degradations in telecommunications, computer, or electronic communications systems, changes in laws, acts of government agencies, government-mandated allocation requirements, issuances of executive orders or other government orders, government-mandated shutdowns or shelter-in-place orders, or unavailability of parts, materials or supplies at a commercially reasonable price.

Kaeser shall be excused from, and shall not have any liability for, any delay in the performance of Services, any applicable delivery, non-delivery, or any other failure to perform any of its obligations under the Agreement where Kaeser’s delay, non-delivery, or failure to perform is caused, in whole or in part, by a Force Majeure Event. Without limiting the generality of the foregoing, if Kaeser is delayed in performing under the Agreement due to a Force Majeure Event, Kaeser will be entitled to extend the relevant delivery for performance date by the amount of time that Kaeser was delayed as a result of the Force Majeure Event, plus such additional time as may be reasonably necessary to overcome the effect of the delay. Should a Force Majeure Event continue for more than thirty (30) calendar days, Kaeser may, upon prior written notice to Customer, cancel the affected purchase orders.

Notwithstanding anything to the contrary contained in the Agreement, to the extent Kaeser’s costs of performance are increased, directly or indirectly, by one Force Majeure Event or by a series of Force Majeure

Events, Kaeser will be entitled to adjust the prices or to apply a surcharge, in each case to recoup those costs plus Kaeser's customary profit, by providing written notice to Customer.

If the Force Majeure Event limits Kaeser's available supply of Services, Kaeser will allocate its available supply in any manner that Kaeser determines, in good faith, or as may be required by law.

## **5. WARRANTIES**

Kaeser warrants all Services performed by Kaeser, other than services provided with respect to equipment not manufactured by Kaeser and advice and technical information provided without charge, shall be performed in a competent, workmanlike manner, and all replacement parts used by Kaeser 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 in performing the Services shall be twelve (12) months from date of service. "Major Components" consist of SFC Drives, Air & Oil Coolers, Airends and Sigma Controllers. Repair, replacement or refund (whichever Kaeser determines, in its sole discretion to provide) shall be Kaeser's sole obligation and Customer'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 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.

THE EXPRESS WARRANTY CONTAINED IN THIS SECTION 5 IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED; AND KAESER 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. Any parts which are manufactured by others and furnished by Kaeser in performing the Services are not warranted by Kaeser, but Kaeser will assign to the Customer the warranty (if any) provided by the manufacturer of such parts. Services performed with respect to equipment manufactured by others, and advice and technical information provided without charge, are provided without any warranties.

## **6. INTELLECTUAL PROPERTY**

All intellectual property rights (including, without limitation, patents, trademarks, registered designs and any rights to apply for the same, copyright, design rights, database rights, rights in and to confidential information and know-how) and any rights analogous to the same anywhere in the world and existing at any time in the Services or arising out of or relating in any way to the provision of Services shall belong to and remain vested in Kaeser. Nothing in the Agreement grants to Customer any right, title or interest in or to Kaeser's intellectual property.

## **7. INFRINGEMENT OF RIGHTS OF OTHER MANUFACTURERS**

In requesting that Kaeser service equipment not manufactured by Kaeser, it is solely the Customer's responsibility to obtain any necessary license or other permission of such other manufacturer, and the Customer agrees to indemnify, defend and hold harmless Kaeser from and against any claim that such Services infringe the proprietary rights of any entity other than Kaeser.

## **8. EQUIPMENT DATA**

The Equipment may be equipped with operations and telematics hardware and software or similar technology ("**Telematics**") for the purpose of recording, compiling, synthesizing, reading, interpreting, and transmitting Equipment Data (as defined and in accordance with Kaeser's [Privacy Policy](#)) about the condition and operation of the Equipment that is generated by the Telematics. Equipment Data may be transmitted to and collected by Kaeser, Kaeser's distributors, and its and their affiliates, subsidiaries, successors, and assigns (collectively, "**Kaeser Recipients**"). If Telematics is activated, Customer agrees that the Kaeser Recipients, without further notice to Customer, have the right to access, use, collect, store, transmit, and disclose Equipment Data in accordance with Kaeser's [Privacy Policy](#). If the Equipment Data includes Customer's Personal Data, Customer consents to the collection, use, and disclosure of such Personal Data as defined and in accordance with Kaeser's [Privacy Policy](#). Customer warrants that it has obtained any necessary consent from its employees or any other third parties, including for the transfer of Equipment Data to other jurisdictions, to comply with any applicable privacy laws or contractual agreements with such employees or third parties and to permit the Kaeser Recipients to access and use the Equipment Data as set forth herein. The Customer shall not use the Telematics to track any person's location unless the Customer has first obtained any necessary approvals from such person to permit Customer or the Kaeser Recipients to track such location. The Customer shall not remove, modify or disable any of the Telematics without Kaeser's prior written consent.

## **9. CUSTOMER'S INDEMNIFICATION**

Customer shall indemnify, defend and hold harmless Kaeser and its officers, agents, and employees from and against any and all losses, damages (including damages arising from personal injury or death), liabilities,

costs and expenses (including attorneys' fees) that may arise out of Customer's acts or omissions, including, but not limited to: (a) any breach by Customer of the Agreement; (b) any violation by Customer of any law, rule or regulation; (c) any use of the Services by Customer; and/or (d) any negligence or willful misconduct of Customer. Kaeser shall give Customer written notice of any claim for which indemnification is sought under the Agreement, provided that the failure to give such written notice shall not, however, relieve Customer of its indemnification obligations, except and only to the extent that Customer forfeits rights or defenses by reason of such failure. Kaeser, may, at Kaeser's option, assume and control the defense of the claim, and in such case, Customer shall indemnify Kaeser from and against losses, damages, costs and expenses (including attorneys' fees, court fees, and other defense costs) incurred by Kaeser in defending such claims. If Kaeser decides not to assume the defense of a claim, then Customer shall assume and control the defense of such claim, at Customer's expense and by Customer's own counsel (which counsel shall be subject to the approval of Kaeser, which approval will not be unreasonably withheld or delayed); provided that Kaeser shall have the right to participate in the defense of any claims with counsel selected by it at Kaeser's expense. Kaeser and Customer shall cooperate with each other in all reasonable respects in connection with the defense of any claims. Notwithstanding any other provision of this Agreement, Customer shall not consent to the entry of any judgement or enter into any settlement of any claims without the prior written consent of Kaeser.

#### **10. LIMITATION OF LIABILITY**

THE REMEDIES OF THE CUSTOMER SET FORTH HEREIN ARE EXCLUSIVE, AND KAESER'S LIABILITY WITH RESPECT TO COMPENSATED SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO THE WARRANTY PROVIDED HEREIN AND, WITH RESPECT TO ANY BREACH OF ITS CONTRACT WITH CUSTOMER, SHALL BE LIMITED TO THE CONTRACT PRICE OF THE SERVICE 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 KAESER, AND THAT KAESER WILL HAVE NO LIABILITY WHATSOEVER WITH RESPECT TO ANY ADVICE OR TECHNICAL INFORMATION PROVIDED WITHOUT CHARGE. PRIOR TO CUSTOMER HAVING ANY RIGHT TO RECOVER DAMAGES (SUBJECT TO THE LIMITATIONS SET FORTH BELOW), KAESER SHALL HAVE THE RIGHT TO CORRECT ANY FAULT OR DEFICIENCY OF ANY SERVICE PROVIDED HEREUNDER IN A REASONABLE TIME FRAME, AND IF KAESER DETERMINES THAT IT IS UNABLE TO CORRECT ANY SUCH FAULT OR DEFICIENCY, THEN IT WILL ALSO HAVE THE RIGHT TO REFUND THE PRICE OF THE DEFICIENT SERVICE. IF KAESER FAILS OR REFUSES TO CORRECT ANY FAULT OR DEFICIENCY, AND REFUSES TO MAKE SUCH A REFUND, THEN CUSTOMER 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.

#### **11. 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's 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 and Customer shall be paid by Customer in addition to the prices quoted or invoiced. In the event Kaeser is required to pay any such taxes or other charges, Customer shall reimburse Kaeser therefor on demand.

#### **12. SUBMITTAL**

Any design, manufacturing drawings or other information or materials submitted to Customer shall remain the sole and exclusive property of Kaeser and shall not be copied or communicated to any third party without the express prior written consent of Kaeser. 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.

#### **13. ENVIRONMENTAL AND SAFETY**

Kaeser is an ISO 9001 and 14001 certified company. Kaeser safety procedures and work instructions are an integral part of these certifications. Kaeser 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 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.

#### **14. MISCELLANEOUS**

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 Customer except upon terms and conditions accepted by an executive officer of Kaeser 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. Kaeser's failure at any time to enforce any of the provisions herein, or to require Customer's performance of any of the provisions herein, shall not be construed to be a waiver of such provisions.

UPDATES. THESE STANDARD TERMS AND CONDITIONS MAY BE MODIFIED, AMENDED AND UPDATED FROM TIME TO TIME AT THE DISCRETION OF KAESER.

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