

**DEFINITIONS:**

In these conditions unless the context otherwise requires:

'Owner' means Air Gas Compressor Specialist Ltd.

'Customer' means the person, or company buying the goods /services from the Owner.

Products and/or services mean the products and/or services being purchased by the Buyer from the Owner.

Contract means the contract between the Owner and the Buyer for the purchase of the goods and or services.

Date of the contract means where the contract arises from a quotation given by the Owner,

- i. the date of acceptance of the order by the Owner; or
- ii. where the contract arises from a quotation given by the Owner, the date upon written notification of acceptance of the quotation is received by the Owner.

Contract price means the price of goods and or services, as agreed between the Customer and the Owner.

Person includes a corporation, association, firm, company, partnership or individual.

Quotation shall mean price on offer for a fixed term.

Manager is the companies appointed decision maker.

PPSA means the Personal Property Securities Act 1999.

The conditions set out below shall apply to all contracts for the Hire of Equipment and/or Supply of Goods and/or Parts and/or Services ("Equipment") between the Owner and the Customer and shall apply from the time of collection/delivery of equipment until the equipment is returned/collected in good condition and working order as set out in Clause 1-14.

All Equipment provided by the Owner to the Customer is supplied on the Owner's Terms and Conditions and the Customer's own terms of trade do not apply. These conditions shall not be modified, amended, waived, in whole or in part, unless otherwise agreed in writing by the Owner.

These conditions replace and supersede all other terms and conditions, if any, previously in force between the Owner and the Customer.

**QUOTATION:**

The Customer may request a Quotation from the Owner setting out the price and quantity of the Goods and or Services to be supplied. If the Quotation is acceptable to the Customer, the Customer may place an order within an acceptable time frame as stated on the quotation, tender documents, work authorisation form or any other work commencement forms, unless otherwise agreed in writing by the Owner.

**ACCEPTANCE:**

If any instruction is received by the Owner from the Customer for the supply of products and/or services, it shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Customer, the terms and conditions are definitive and binding.

**WORK COMMENCEMENT:**

The Customer acknowledges that any estimates as to the time frames for the commencement and completion of work, services or goods, are approximate only. The Owner will use all reasonable endeavours to ensure the goods, work, services is commenced and completed within the time frame specified but will not be liable for any delay or failure to do so. The Owner will not be responsible or liable for any delays caused by separate or nominated subcontractors or any other delays of any description. Should any delays occur the Customer agrees that all costs incurred by the Owner and resulting from such delays will be charged as a variation to the quoted price.

**VARIATIONS:**

The Owner reserves the right to add additional charges, over and above the accepted quotation payable by the Customer, if the contract exceeds the acceptable time frame as stated on the quotation, tender documents, work authorisation form or any other work commencement forms, unless otherwise agreed in writing by the Owner.

**TERMS AND CONDITONS:**

These terms and conditions and any subsequent terms and conditions issued by the Owner shall apply to all orders for the goods and the services made by the Customer after the date and time at which these conditions are first delivered or sent by email or facsimile to, or otherwise brought to the notice of, any employee, staff member or representative of the Customer. It shall be the Customer's responsibility to ensure that these conditions are promptly brought to the attention of the appropriate staff of the Customer, and accordingly any order made by the Customer after the date and time described above in this clause shall be deemed to be an acceptance of these conditions.

**ACCOUNT:**

The amount shown as Debit balance of this account will be paid in full by the twentieth (20<sup>th</sup>) of the month following the date of purchase. Payment by cheque will not be treated as made if the cheque is subsequently dishonoured by the Customer's bank. Interest of 5% per calendar month may be charged on the total sum payable on overdue accounts. In the case of default payments, bankruptcy, insolvency or the assignment by the Customer for the benefit of its creditors the entire outstanding debt owing shall become due and payable

immediately at the option of the Owner. All costs (including solicitors/client basis) of recovering overdue amounts will be due and payable by the Customer.

#### **OWNERSHIP:**

Ownership in any Equipment supplied by the Owner shall not pass to the Customer unless and until all monies owed by the Customer to the Owner for both Equipment/Services and any Equipment/Services supplied to at any time to the Customer. Nothing in this condition shall prevent the sale by the Customer of the Equipment in the normal course of the Customer's business, but the Customer acknowledges that the proceeds of any such sale will be held in trust in a separate account for the Owner and that the Customer stands in a fiduciary relationship with the Owner

#### **REPOSSESSION:**

The customer acknowledges the right of the Owner or its representative or agent to enter any premises in which the Customer has stored such Equipment and to take possession of the Equipment if payment has not been made within the stipulated time, or the Customer has become bankrupt or, in the case of a body corporate a receiver or a liquidator is appointed, or the Customer have indicated that the Customer is unwilling or unable to pay for the Equipment.

#### **RISK:**

The Equipment shall be at risk of the Customer from the time the Equipment leaves the Owners premise.

#### **RETURN OF EQUIPMENT:**

No Equipment will be accepted for return without prior agreement by the Owner. Such agreement shall always be subject to receipt of Equipment free of freight charges to the Owner, in good order and condition and suitable for resale and returned within 14 days of receipt and the quotation of the relevant invoice number. A service charge may be applied to defray administrative and handling costs equal to 10% of the price of the procured Equipment returned, unless expressly waived by the company.

#### **PRICE:**

The Price shall be as indicated on invoices provided by the Owner to the Customer in respect of products and/ or services supplied; or

- 1.1 The Price shall be the Price of the Owner's current Price at the date of delivery of any goods.
- 1.2 Time for payment for the products and/or services shall be of the essence and will be stated on the invoice, quotation, tender documents, work authorisation form or any other work commencement forms. If no time is stated then payment shall be due prior, to delivery of any goods and or services.
- 1.3 The Customer agrees that the cost Price shall be determined by the Owner, and shall take into consideration "one-off" costs such as design and production.
- 1.4 The Owner reserves the right to implement a surcharge for alterations to specifications of products and or services after the order has been placed.
- 1.5 The Owner reserves the right to implement 'extra charges' for variation on goods, equipment, services after the order has been placed
- 1.6 Notwithstanding anything contained in this clause or the quotation, the price of the goods and/or services may be increased by the amount of any reasonable increase in cost of supply of the goods or services between the date upon which the quotation is delivered to the Customer and the date upon which the goods or services are supplied

#### **CHARGES:**

- 2.1 Equipment may be hired for a) daily, b) weekly, c) monthly, or e) as agreed to in writing. The "Hire Periods" are as defined in clause 2.2 certain Equipment may carry minimum hiring periods.
- 2.2 Hire Periods, Usage and Maximum periods of usage are:  
"Day/Daily" means up to 8hrs in any 24 hour period  
"Week/Weekly" means 5 days  
"Monthly" means 4 weeks unless a Calendar month is specified  
"Minimum Period" is a period up to and not exceeding 8hrs from collection to return  
"Standby" means not used/run; backup Equipment only  
"Runtime" means the hrs/days the Equipment is being used/run
- 2.3 The hire period is reckoned from the date/time on which the Equipment leaves the Owner's premises until it arrives there again or this hire agreement is terminated pursuant to clause 3.11, 3.12 & 5.1, 5.2, 5.3
- 2.4 If the Equipment is used for more than 8 hours in a single day the Owner will charge extra hours at a pro rata or extra shift(s) rate unless otherwise agreed to in writing prior to the hire commencing.
- 2.5 The Owner will negotiate longer term hire periods, charge/daily rates. The period of hire and charge/daily rate must be confirmed by the Owner in writing prior to the hire commencing.
- 2.6 No allowance whatever can be made for the time during which the Equipment is not in use, unless special arrangements are made before and confirmed in writing. "Time out Not time used".
- 2.7 The Owner may accept a stand-down of the Equipment but this must be negotiated and agreed to in writing prior to the hire commencing
- 2.8 The hire charge will be solely as specified by the Owner and maybe changed by the Owner at its sole discretion by notifying the Customer in writing 7 days prior to any rate change taking effect.

- 2.9 The Customer shall pay as invoiced for the Hire Period for all materials used, loss and damage, waiver charges (if applicable), delivery/ removal costs, excess use / pro-rata charges, damage to or loss of the Equipment, cleaning costs (if any), default interest for late payment.
- 2.10 The Customer shall pay as invoiced for all servicing, maintenance and repair work
- 2.11 The cost of reconditioning Equipment blunted by use or rendered unfit for further service, without repairs, will be on-charged to the Customer and the Customer shall pay as invoiced

#### **PAYMENT AND DEFAULT INTEREST:**

- 3.1 All charges are plus GST unless otherwise indicated.
- 3.2 For hire of Equipment, the Customer may be required to pay a deposit of not less than the estimated total charge
- 3.3 On return of the Equipment in good order and condition, the actual total charges will be calculated and the Customer will either pay or be refunded with the difference between the deposit and the total charge
- 3.4 For purchase of Equipment the Customer will pay the owner the agreed price. Risk passes on delivery of equipment.
- 3.5 Any agreed discount for charge account customers is claimable ONLY if the account is paid by the **20<sup>TH</sup> OF THE MONTH** following the date of the invoice.
- 3.6 The Customer must not make any claim for credit more than 14 days after the date of the invoice
- 3.7 Without prejudice to the Owners other remedies under these conditions at law or otherwise, the Customer will pay default interest at the rate of 5% per calendar month on all outstanding amounts from the end of the agreed Hire Period or from the 20<sup>th</sup> of the month from the date of invoice until all monies have been paid in full.
- 3.8 No credit shall be extended on overdue accounts.
- 3.9 The Customer shall pay to the Owner all costs and expenses incurred by the Owner in recovering money or in connection with the exercise or attempted exercise of any of its right or remedies under this contract including commissions and legal costs, solicitor and client basis.
- 3.10 The Customer must make all payments due under this contract without set-off or deduction of any kind.
- 3.11 Without prejudice to any other remedies the Owner may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Owner may suspend or terminate the supply of Goods and or Services to the Customer and any of its other obligations under the terms and conditions. The Owner will not be liable to the Customer for any loss or damage the Customer suffers because the Owner exercised its rights under this clause.
- 3.12 In the event that:
- a. any money payable to the Owner becomes overdue, or in the Owner's opinion the Customer will be unable to meet its payments as they fall due; or
  - b. the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - c. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer; then without prejudice to the Owner's other remedies at law
  - d. the Owner shall be entitled to cancel all or any part of any order of the Customer that remains unperformed in addition to, and without prejudice to any other remedies; and all amounts owing to the Owner shall, whether or not due for payment, immediately become payable.

#### **DELIVERY AND REMOVAL:**

- 4.1 Delivery and removal charge payable by the Customer is in addition to the Equipment costs
- 4.2 The Customer authorises the Owner to bring the Owners vehicle onto the place where the Equipment is to be used or is located to deliver and/or remove the Equipment either on the expiry of the hire period or on the breach by the Customer of any term in this contract.
- 4.3 The Customer indemnifies the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owners actions under this clause.
- 4.4 The Customer must make any requests for removal firstly by phone and then followed by email confirmation at the completion of the hire to the Owner.

#### **OWNERS RIGHT TO CANCEL:**

- 5.1 If the Owner believes the Equipment to be at risk for any reason whatsoever including but not limited to the manner of its use by the Customer or adverse weather or work conditions, or that the Customer is unable to, or might be unable to pay any hire charge or purchase price the Owner may take action as necessary to retake possession of the Equipment. Accordingly the Customer grants the Owner or will procure that the Owner is granted and irrevocable right and authority to enter at any time onto any place where the Equipment is situated or thought to be situated to remove the Equipment.
- 5.2 The Customer indemnifies the Owner against any cost, claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner exercising its rights under

this clause or otherwise acting to recover any Equipment hired or monies payable by the Customer pursuant to this contract.

- 5.3 The Owner will not be liable to the Customer or any other person's for loss suffered or liability incurred arising from cancellation or repossession of the Equipment.

**NO ASSIGNMENT:**

- 6.1 This contract is personal to the Customer and is not capable of assignment whether in whole or part by the Customer.

**CUSTOMERS OBLIGATIONS:**

- 7.1 Pay all hire charges and other charges, fees, taxes, levies, duties and imposts that become due and payable under a hire agreement executed with the Owner.
- 7.2 Pay to the Owner any debts under the payment terms agreed to in these conditions of trading
- 7.3 Subject to clause 9 (INSURANCE) in the case of hired Equipment, the Customer is responsible for any loss or damage to the Equipment from the time the Equipment leaves the Owners premise until it is returned to the Owners possession.
- 7.4 The Customer shall notify the Owner in writing immediately if the Equipment is lost or damaged and shall follow all reasonable instructions of the Owner.
- 7.5 The Customer indemnifies the Owner for all losses, including any breach of any legislation, arising out of or in any way related to the use of the Equipment by the Customer and the Customer hereby warrants that the Customer holds insurance to cover the Customer's liabilities arising from or relating to the use of the Equipment.
- 7.6 The Customer indemnifies the Owner against the destruction or loss of the Equipment by any means or for any reason whatsoever, including lawful confiscation.
- 7.7 The Customer agrees that should any Equipment require maintenance and/or repairs and / or servicing shall be affected only by the Owner or its duly authorised agent at the cost of the Customer.
- 7.8 The Customer agrees that all such maintenance and/or repairs and / or servicing shall, (including by way of example the supply of all necessary parts, oils, grease and fuel) is at the cost of the Customer and additional to the Hire Charges.
- 7.9 In the case of damage to the Equipment, however caused, the Customer shall be responsible for and indemnify the Owner for the full cost of any repairs to restore the Equipment to the condition it was in at the time of the hire.
- 7.10 In the case of loss of the Equipment, however caused, the Customer shall be responsible for and indemnify the Owner for the full cost to the Owner of replacing the Equipment within a period of time agreeable to the Owner.
- 7.11 In addition the Customer shall be responsible for and indemnify the Owner for any loss of revenue suffered by the Owner due to the unavailability of the Equipment for hire and or sale due to loss or damage.
- 7.12 The Customer is responsible for:
- a. Taking proper and reasonable care of the Equipment, if the Equipment is hired, return in good order and condition and
  - b. Satisfying themselves regarding the suitability and fitness for the purpose intended of hired items upon receipt of the items; and
  - c. Acknowledge that in no way has it relied on any verbal representations made by or on behalf of the Owner in respect of the Equipment, its purpose, performance or use.
  - d. Use the Equipment only for the purpose for which the manufacturer designed and intended it to be used.
  - e. Using the Equipment in a lawful manner with due regard to all laws and regulations pertaining to the use of such Equipment and regulations pertaining to the use of such Equipment; and
  - f. If the Equipment is hired, immediately notify the Owner by telephone upon occurrence of the following events:-
    - Movement of the Equipment from one location to another.
    - Breakdown or malfunction of the Equipment.
    - Failure of the Equipment to perform to specification.
    - Loss or damage to the Equipment.
- If such notification is not received by the Owner, the Customer may be liable for any extra costs incurred by the Owner as a consequence.
- g. Be responsible for all daily maintenance routines as outlined in the manufacturers specifications or as in instructions provided by the Owner. These shall include but not be limited to checking the condition of and levels of
    - Batteries, oils, lubricants, coolants, drive belts and tyres and making any deficiencies good.
  - h. Transport charges incurred at the request of the Customer will be to the Customer's account unless otherwise agreed in writing by the Owner.

- i. Clean the Equipment thoroughly at the conclusion of the hire. If the Equipment is not cleaned to the Owner's satisfaction, the Customer shall be liable for a cleaning fee charged by the Owner.
- j. Ensure the Equipment is securely stored when not in use.
- k. Any loss of or damage, abuse or vandalism to the Equipment, howsoever caused, reasonable fair wear and tear excepted. Such reasonable fair wear and tear is to be decided solely and completely at the Owner's discretion.
- l. Agree to indemnify and keep indemnified the Owner against any and all actions, suits, proceedings, claims, demands, costs and expenses howsoever incurred in relation to the Owner exercising its rights.
- m. Confirm with the Company the rates and charges applicable to the hire prior to the hire commencing.
- n. Except as permitted by the Consumers Guarantee Act 1993, not bring or threaten to bring claim against the Owner for loss or damage incurred or threatened against the Customer or arising directly or indirectly from the Customer's use of the Equipment; and
- o. Indemnifying the Owner against any claim made by any person against the Owner for any loss suffered or liability incurred arising directly or indirectly out of the Customer's use or possession of the Equipment.
- p. Any damage to the Equipment by any party other than the Owner; whether malicious, negligent or accidental
- q. The cost of repair or replacement of any Equipment which have been modified or altered in any way by any person other than the Owner.
- r. The repair or replacement of the Equipment where any action by the Customer or any person other than the Owner invalidates any warranty for the Equipment given to the Owner by its manufacturer or supplier and the Customer will pay to the Owner in relation to repair or replacement of the Equipment and any other loss suffered by the Owner.

7.13 The Customer warrants that all persons who use the Equipment shall be COMPETENT and QUALIFIED to use the Equipment, shall have received the correct training, shall use the Equipment in the manner it was designed to be used, and follow any directions from the Owner, local authorities, codes of practice or from the manufacturer of the Equipment relating to the use and control of the Equipment and person using said Equipment to the Health and Safety in Employment Act 1992 and all other relevant legislation.

7.14 If the Customer is not an individual, the person who signs for the Equipment on behalf of the Customer, warrants that they have the authority to bind the Customer and will, in any event, be personally liable for the performance of the obligations of the Customer.

#### **PERSONAL PROPERTIES SECURITIES ACT 1999 (PPSA):**

- 8.1 Hire or acquisition of Equipment may create a security interest in the Equipment. If so, the provisions of this clause 7 apply. All terms in this clause 7 have the meaning given in the PPSA and section references are sections to sections of the PPSA.
- 8.2 On the request of the Owner the Customer shall promptly execute any documents, provide all necessary information and do anything else required by the Owner to ensure that the security interest created under this contract constitutes a perfected security interest in the Equipment and their proceeds which will have priority over all other security interests in the Equipment.
- 8.3 The Customer will pay to the Owner all fees and expenses incurred by the Owner in relation to the filing of a financial statement in connection to this contract.
- 8.4 The Customer waives its rights under sections 114(1) a), 16, 117, 119, 120, (2), 121, 125, 129, 131, 132, 133, 134 and 148 of the PPSA.
- 8.5 The Customer waives its rights to receive a copy of any verification statement relating to the Owner registering, changing or renewing any financing statement on the Personal Properties Securities Register.

#### **INSURANCE:**

- 9.1 The Equipment shall be at the sole risk of the Customer from the time the Equipment leaves the Owners site until return to the Owners site.
- 9.2 The Customer will affect full replacement insurance (with no depreciation) in the joint names of the Customer and the Owner against loss or damage however caused, and will provide proof of such insurance to the Owner upon request.

#### **LIMITATION OF LIABILITY:**

- 10.1 Except when the owner is in breach of a guarantee in terms of the Consumer Guarantees Act 1993, the Customer in entering into this contract acknowledges that in all other circumstances whatsoever the Owner shall not be liable for direct or consequential damage or loss or expense whatsoever and howsoever arising (whether in contract or in tort) including that resulting from the negligence of the Owner or arising by operation of law and whether suffered by the Customer and/or any third party for any amount that exceeds the amount actually paid by the Customer to the Owner pursuant to this contract.

- 10.2 If the Customer is acquiring Equipment for the purposes of a business as defined in the Consumer Guarantees Act 1993, the provisions of the act do not apply.
- 10.3 If the Customer is purchasing Equipment, then except as prohibited by law, all guarantees in respect of the Equipment, whether express or implied are excluded.
- 10.4 The Owner shall not, in any event, be liable to compensate the Customer, his servants, agents, or any third parties for direct, contingent, consequential, indirect, special, punitive or any other damages, howsoever caused, for any damage to property or injury to person, whether arising out of the use or operation of the Equipment or otherwise and whether arising under breach of warranty, contract, negligence, commission, omission (or advice), tort, strict liability or otherwise.

#### **ENVIRONMENTAL MANAGEMENT:**

- 11.1 The Environmental Management at any site on which the Owner's Equipment is used is the responsibility of the Customer.
- 11.2 In this regard the Owner disclaims responsibility for any infringements which occur related to breaches of Acts, Rules or Regulations pertaining to environmental pollution aspects such as noise, atmospheric, water, sewer, dangerous goods, waste disposal etc. The Owner is not liable for use or operation of Equipment or indirect or consequential loss.

#### **GENERAL:**

- 12.1 Headings are included for convenience and shall not affect the construction of this contract. The singular includes the plural and vice versa. Persons include incorporated and sub clause is a reference to a clause or sub clause hereof. A reference to Owner includes its servants and agents
- 12.2 If at any time any provision of this contract is or becomes illegal, invalid or non-enforceable in any respect under the law of New Zealand, neither the legal validity nor enforceability of the remaining provisions hereof shall in any way be affected or impaired thereby to the intent that this contract should be construed as if the provision or part thereof in question has been deleted.
- 12.3 Equipment purchased from the Owner remains the property of the Owner until paid for in full.
- 12.4 These conditions replace and supersede all other terms and conditions of hire, if any, previously in force between the Owner and the Customer.
- 12.5 Unless otherwise agreed in writing by the Owner, the parties agree that all Equipment supplied, including Services provided by the Owner to the Customer are supplied on the Owner's Terms and Conditions and the Customer's own terms of trade do not apply.
- 12.6 The parties acknowledge that these conditions constitute the entire agreement between the parties notwithstanding any previous negotiations and discussions or representations unless confirmed in writing by the Owner.
- 12.7 Failure by the Owner to insist upon strict performance of any of these conditions or to exercise in whole or part any at law rights that may accrue under these conditions shall not be deemed to be a waiver of any rights that the Owner may have and shall not be deemed to be a waiver of any further breach of these conditions.

#### **FORCE MAJEURE:**

- 13.1 The Owner shall have no liability for any consequence of delay or failure in carrying out the contract caused by force majeure.

#### **PRIVACY ACT 1993:**

- 14.1 If the Customer is an individual, this clause 14. applies. This contract collects personal information about you. The information is principally collected to evaluate the hire of equipment that you seek. The information is collected and held by the Owner. The failure to provide the information on the front of this contract may result in your application being declined or this contract subsequently being terminated by the Owner. The Customer has rights of access to personal information contained in this contract, subject to the provisions of the Privacy Act 1993. The Customer agrees that its personal information may be used by the Owner to advise the Customer of the Owners other goods and services. The Customer authorises disclosure of personal information held by any other party regarding any previous hire agreements entered into by the Customer. The Customer agrees to the Owner releasing to any other parties information regarding this hire agreement if the Customer does not comply with its obligations.
- 14.2 The Customer and each person who signs the Owners application for Credit authorises the Owner:  
To collect retain and use information about the Customer or such other signatory's creditworthiness; to disclose information about the Customer or such other signatory:  
To any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to the Customer's obligations to the owner  
To such persons as may be necessary or desirable to enable the Owner to exercise any power, enforcement or attempted enforcement of the Owner's rights, remedies and powers under these conditions.