

**Purchasing Terms and Conditions of  
KAESER Kompressoren GmbH, Carl-Kaesar-Str. 26, 96450 Coburg, Germany  
(hereinafter referred to as "KAESER")**

**Article 1 Application of the Terms and Conditions of Purchase**

1. The following Terms and Conditions of Purchase shall apply to all legal relations between KAESER and its suppliers, provided the Supplier is a business enterprise. Deviating terms and conditions, especially the Supplier's terms and conditions of sale, shall apply only if they have been accepted in writing by KAESER.
2. When the Supplier delivers goods for the first time on the basis of these Terms and Conditions of Purchase, it accepts and agrees that all further contracts shall also be governed by such terms and conditions as amended at the relevant time.
3. Any general purchasing contracts, disposition agreements or delivery contracts via ICH that may exist between the parties shall have priority. Such general contracts shall be supplemented by these Terms and Conditions, unless the general contracts contain more specific provisions. Amendments, additions or verbal side agreements shall be valid only if they have been confirmed in writing by KAESER.

**Article 2 Effectiveness of Purchase Orders**

1. Conclusions of contracts, purchase orders and delivery schedules, as well as changes to and modifications of them, shall be effective only if made out in writing (transmission by fax or e-mail permitted) and duly signed or certified to be valid. Purchase orders and delivery schedules may also be effected by way of remote data transmission (e.g. EDI) or machine-readable data carriers. The wording of the purchase order shall exclusively be binding. The Supplier shall acknowledge the purchase order in writing no later than 7 days from the date of the order. In the event that shorter delivery periods apply the time period for acknowledging the purchase order is reduced to half the time of the delivery period. After expiry of that period, KAESER shall be entitled to revoke its purchase order(s). Claims of the Supplier shall be excluded in the event of a duly made revocation.
2. KAESER shall be entitled to demand modifications to the item to be supplied even after the contract has become effective, provided that the Supplier can be reasonably expected to make such modifications or that KAESER has assumed the obligation to reimburse the Supplier for additional expenses potentially resulting from the modification to the item to be supplied.
3. The Supplier is allowed to place orders with sub-suppliers in regard of the items to be supplied only with the consent of KAESER.

**Article 3 Prices, Payment**

1. Agreed prices are firm and include the entire cost of packing and shipment to the named destination or place of use, the cost of customs clearance, customs duties and, in case of doubt, the value-added tax at the rate valid at the time of delivery. If no prices are given in the purchase order, the prices that the Supplier intends to charge shall be submitted in advance to KAESER for approval.
2. Invoices showing all relevant data such as, for example, the identification numbers of the items ordered and the customs tariff numbers, as well as the value-added tax are to be submitted in two copies after delivery. Invoices shall not be due and payable unless this data is provided.
3. Subject to inspection of the goods delivered KAESER will pay within 14 days from receipt of goods and invoice, deducting 3% cash discount, or within 30 days, deducting 2% cash discount, or net within 60 days.
4. If early delivery is accepted, the payment period shall be based on the delivery date originally agreed.
5. If the goods delivered are incomplete or faulty, KAESER shall have the right to withhold the full payment or an amount representing the pro rata value, until the Supplier has duly performed its duties. The Supplier shall not have the right to withhold any payment or to offset any payment against any claims it may have against KAESER, unless such claims have been acknowledged by KAESER, are legally valid or ready for a decision.

**Article 4 Delivery Dates and Periods**

1. The agreed delivery dates and periods shall be binding, the criterion of observance being the time of arrival of the goods at KAESER's factory or the place of performance as agreed or - in case of doubt - as named by KAESER.
2. The Supplier shall be obliged to inform KAESER immediately if any circumstances occur or become evident that indicate that the agreed delivery dates may not be met.
3. If the Supplier fails to observe delivery dates and periods for reasons that are within its control, KAESER shall - without giving notice of default or granting a temporary respite - be entitled to withdraw from the contract and/or claim damages.
4. If the Supplier fails to observe delivery dates and periods for reasons that are provably beyond its control, the parties to the contract shall make good faith efforts to adapt the contract to the changed conditions. However, KAESER shall be relieved of its obligation to take delivery of the goods ordered and shall be entitled to rescind the contract if, in view of the time passed, the goods ordered are no longer of economic value to KAESER.
5. Partial shipments shall be allowed only if they have been specifically agreed in writing.
6. A reservation of title clause has not been agreed.

**Article 5 Passage of Risk / Packing / Insurance**

1. Delivery shall generally be made free buyer's address, and the Supplier shall bear the risk of transportation until the goods are handed over in full at the contractually agreed destination or place of use. Where shipment is KAESER's responsibility, the Supplier shall nonetheless bear the risk of transportation.

2. The Supplier shall exclusively use environmentally compatible packaging materials and pack the goods in a manner to avoid transportation damage and at the same time reduce the waste disposal expenditure of KAESER. In addition, the provisions of the packaging regulation shall apply.
3. The Supplier shall insure the goods at its own expense against loss and damage in transit and shall furnish proof of such insurance at the request of KAESER.

**Article 6 Notice of Defects**

- 1.a) KAESER shall inspect the products supplied within a period of two weeks from receipt of goods. If the proper function of the product supplied and the absence of defects cannot be established without undue efforts or costs before the product has been installed or put into operation and/or finally accepted, the inspection may be made later on any of these occasions.
- b) If a specific quality assurance agreement has been signed between the Supplier and KAESER, the obligation to inspect the goods shall be confined to an inspection for transportation damage as well as an identity and quantity check and a functional test, where the Supplier can be reasonably expected to perform such functional test. This shall apply also if the Supplier is certified according to ISO 9000 ff. and has used this certification in its advertising, but has not, within a period of one week of signing the contract, informed KAESER in writing that no such meaning shall be attached to its certification.
2. Any defect found shall be reported by means of notice of defects within two weeks.
3. The Supplier shall waive the defence of late inspection or late notice of defects, if KAESER has duly performed its duties in accordance with items 1 and 2 above.

**Article 7 Warranty / Guarantee**

1. The Supplier shall guarantee that all goods/services are in accordance with the state of the art, the applicable national, European and international legal regulations and the regulations and rules issued by authorities, trade associations and federations. The Supplier shall further guarantee that the products supplied and the packaging materials are environmentally compatible. Should the products supplied not be in conformity with the guarantee provided, the Supplier shall be liable for any damage resulting there from, including consequential damage. KAESER shall be entitled to demand that the Supplier provide, free of charge, inspection certificates for the items supplied.
- 2.a) The warranty period shall be two years from the time the defect has been established by KAESER, but no longer than five years from the passage of risk or - in the event of work performed by the Supplier - from the time of acceptance.
- b) If the items supplied are installed "as delivered" into products that are KAESER's property, the warranty period shall start to run at the time the products are put into operation by the end user. However, the warranty period shall not end later than five years after delivery of the goods to KAESER or - in the event of a contract for work - after acceptance of the work by KAESER.
- c) The above provision shall apply without prejudice to any rights of recourse that KAESER may have against the Supplier, if a consumer makes any warranty claim against his or her contractual partner for a refund or reduction of the purchase price. In this case, the specific regulations relating to the purchase of consumer goods according to Articles 478 and 479 of the German Civil Code (BGB) shall apply.
3. Should the items supplied show or develop any redhibitory defects during the warranty period, the Supplier shall rectify the defects by - as KAESER may choose - either repairing the defective item or delivering a non-defective replacement. Claims of KAESER for damages or for compensation for expenses incurred in vain attempts to rectify the defects shall remain unaffected. All costs involved in the rectification, repair or delivery of a replacement (e.g. cost of labour / cost of material / cost of transportation (including customs duties) / cost of increased receiving inspection tests exceeding the normal level / cost of any necessary recall / cost of taking legal action, etc.) shall be for the Supplier's account.
4. If KAESER's claim for rectification of defects is not satisfied within the legal time periods, the rectification shall be deemed to have failed, and KAESER shall be entitled to remedy the defects itself, or have them remedied by a third party, without prejudice to the Supplier's liability for defects.
5. The Supplier shall bear the cost and the risk in connection with the return of defective items.

**Article 8 Product Liability**

1. The Supplier shall be obliged to compensate KAESER for any damage it may suffer due to a defect in the item supplied. If a claim is brought against KAESER under the provisions of domestic or foreign product liability regulations on account of product deficiency due to defects in the goods delivered by the Supplier, the Supplier shall be obliged to indemnify KAESER against all claims relating to a defect in the goods supplied. The Supplier's obligation to provide compensation shall comprise, apart from compensation to third parties, the cost of legal defence, recall costs, removal and installation costs, as well as administration costs and general expenses incurred by KAESER in obtaining compensation for the damage sustained.
2. The Supplier shall be obliged to take out product liability insurance at its expense, which insurance shall cover also the recall risk - if and to the extent that such risk is coverable - and furnish proof of such insurance at the request of KAESER. The product liability insurance shall apply worldwide and shall provide coverage that meets the applicable maximum liability limits as defined in the German Product Liability Act in terms of scope and duration.

#### **Article 9 Confidentiality / Patterns / Tools / Data Protection**

1. The Supplier shall be obliged to treat the conclusion of the contract confidentially. All commercial and technical details as well as all business transactions, of which the Supplier may learn through its business relations with KAESER, shall be treated as a trade secret for as long as such details are not part of the public domain. The obligation to maintain confidentiality, which shall survive the expiration or termination of the contract, shall be imposed by the Supplier on its employees, sub suppliers or other agents through a similar contractual provision.
2. Objects such as in particular tools, moulds, devices, patterns, templates, dies, samples and other means of production which KAESER may make available to the Supplier, shall remain the property of KAESER. If the above items are specifically made or manufactured for KAESER, they shall become the property of KAESER at the time they are made or manufactured, with the Supplier acting as agent in possession. The Supplier will mark these objects as property of KAESER, making sure that the marking is fitted in a proper place, is well visible and cannot be removed easily.  
The same shall apply to formulations, drawings, analysis methods as well as any procedures disclosed.  
The above mentioned objects, documents, and procedures may be handed over or otherwise made available to a third party only with the prior written consent of KAESER. Providing information about the intended purpose and the recipient is a prerequisite for obtaining that consent.
3. The Supplier shall use the tools owned by KAESER exclusively for the purpose of producing the goods ordered by KAESER and, unless insured already by KAESER, insure such tools for its own account against fire and water damage as well as theft. The Supplier shall also perform the required inspection and maintenance of the tools at its own expense.
4. The Supplier is aware that its personal data will be stored on data carriers by KAESER.

#### **Article 10 Intellectual Property Rights**

1. The Supplier shall be liable for any damage resulting from infringement of intellectual property rights and/or applications for such rights, through the contractual use of the items delivered.
2. In the event of any claims being made against KAESER or its customers by a third party, the Supplier shall, upon first request, indemnify KAESER or its customers against all claims resulting from the use of such intellectual property rights. The Supplier's obligation to indemnify KAESER or its customers shall apply to all costs that KAESER or its customers may incur due to, or in connection with, any claim from a third party. Such costs include in particular the cost of pursuing legal remedies and exercising legal rights as well as all costs incurred in procuring a replacement.
3. The Supplier shall not be obliged to indemnify KAESER or its customers if the Supplier – at the time of manufacturing the items in question on the basis of formulations, drawings, patterns or other similar descriptions or information provided by KAESER - was ignorant of the intellectual property rights owned by a third party. This shall not apply if the Supplier's ignorance is due to gross negligence. In the event of the Supplier not being liable under item 3, KAESER shall indemnify the Supplier against any claims from a third party.
4. Prior to the conclusion of the contract negotiations, the Supplier shall provide information in writing about the use of any published intellectual property rights, its own unpublished intellectual property rights or any intellectual property rights licensed by a third party or applications for such rights. The Supplier shall not have any additional claim for compensation due to the fact that using the items delivered implies using intellectual properties of the Supplier or a third party or applications for such rights.
5. The period of limitation for any claims against the Supplier under Article 10 is 10 years from the date the contract is signed.

#### **Article 11 Safety Rules**

1. In respect of the items delivered, the Supplier shall comply with generally acknowledged technical standards, safety rules, rules for accident prevention, environmental rules and state-of-the-art technical data and limit values or specifically agreed data and limit values exceeding the state-of-the-art levels. The Supplier shall conform in particular to the following: DIN, EN, ISO, LMBG, VDE, EC Directives (e.g. EC Machinery Directive, EC Pressure Vessels Directive etc.) and other domestic and international regulations and/or EC Directives relevant to its scope of delivery.
2. The Supplier undertakes to use exclusively materials that conform to the legal safety rules and regulations as amended at the relevant time, especially those relating to restricted, toxic, and hazardous substances. The same shall apply to all environmental regulations as well as regulations about electricity and electromagnetic fields. This obligation shall cover all regulations that are applicable worldwide.
3. If the products delivered by the Supplier do not meet the requirements specified under the above items 1 and 2, KAESER shall be entitled to withdraw from the contract without prejudice to any claim for damages.
4. Any intended modifications to the item to be supplied shall be communicated to KAESER. Such modifications require the written consent of KAESER.

#### **Article 12 Quality and Documentation**

1. The scope of supply shall include, without any extra charge, the product-specific and/or technical documentation, the certificate of conformity as well as any other documents and certificates that may be required for the item ordered or its use or operation (e.g. instructions for use and maintenance, storage and assembly information etc.) as well as the necessary identification of the parts (brands, manufacturer's marks, order numbers, item numbers,

- series identification numbers, etc.) and/or their packaging. In addition, the Supplier shall state in the acknowledgment of the purchase order the weight and measurements per unit of the items to be delivered.
2. The cost of certificates of conformity shall be borne by the Supplier. Certificates of conformity as well as the further documentation referred to in Article 12 no. 1 shall be submitted in German and/or all official languages of the European Community without delay at the request of KAESER.
3. Irrespective of the above, the Supplier shall continuously check the quality of the items to be supplied. Potential improvements shall immediately be communicated to KAESER. This shall apply in particular to all safety-related components. The Supplier is obliged to check the design for feasibility and plausibility. Any noticeable faults in the specifications as well as foreseeable complications shall be pointed out to KAESER without delay.
- 4.a) Where minimum and/or maximum parameter values are specified in the purchase order, the maximum levels must not be exceeded in any area of the work piece or product and/or lower-than-specified parameter levels must not be present at any point.  
b) The above shall be ensured by means of suitable testing and measuring methods and documented.  
c) KAESER may demand at any time that the results of the relevant tests be reported in writing free of charges.
5. If the type and scope of the test as well as the test apparatus and method have not been firmly agreed between the Supplier and KAESER and if the Supplier so requests, KAESER shall, based on its know-how, experience and expertise, discuss the tests with the Supplier in order to define the required test standard. Regardless of this, the test shall at least conform to state of the art in regard to the scope and type of testing.
6. The Supplier shall test safety-related components and document the test performed, which means that the Supplier shall specifically record when, how and by whom the items delivered were tested for the properties in question. The same shall apply to the test results. The components to be tested in this manner are safety-related parts that are classified as such in the product-specific or technical documentation or by specific agreement or whose safety relevance is evident. The test documentation shall be preserved for a period of 10 years and shall be made available to KAESER free of charge upon request. To the extent legally possible, the Supplier shall impose similar obligations on its upstream suppliers through a written contract.
7. If any authorities responsible for production safety, production identification, waste gas regulations, etc. demand to inspect KAESER's production operations and consult its test documents in order to check compliance with specific requirements, the Supplier shall grant KAESER the same rights in regard to its production location and provide all reasonable support in this context.

#### **Article 13 Audit**

1. KAESER shall have the right to perform a supplier audit or have such audit performed by an expert of its choice. The audit shall comprise the inspection and subsequent assessment of the Supplier's factory and quality assurance system. KAESER will use the data obtained through this audit as a basis for future order placements and for the internal rating of the factory.
- 2.a) KAESER shall be entitled to perform announced inspections of the Supplier's regular operations in order to verify the Supplier's quality assurance system.  
b) Where quality problems were experienced in the past, KAESER shall be entitled to perform also unannounced inspections for the purpose of evaluating the quality assurance measures. KAESER shall not have this right, if the latest complaint about quality assurance measures dates back more than one year or if no shortcomings were found in two successive unannounced inspections.  
c) KAESER shall have the right to inspect sub supplier documents, provided it can prove that it has a vital interest in such documents. An interest qualifies as vital in particular when the inspection is expected to provide information that permits to assess the need for, and scope of, a potential recall.

#### **Article 14 General Provisions**

1. If the Supplier fails to comply with essential duties under the contract, if insolvency proceedings are opened in respect of its assets or if court composition proceedings or out-of-court conciliation procedures are initiated against it, KAESER shall be entitled to rescind the non-fulfilled part of the contract.
2. The foregoing shall also apply if the Supplier manufactures or has third parties manufacture products in child labour
- 3.a) The ineffectiveness of individual provisions shall not affect the general validity of these Terms and Conditions.  
b) The parties to the contract are obliged to replace ineffective provisions with effective provisions that come as close as possible to the intended economic purpose.  
c) The same shall apply in the event of any omission.
- 4.a) The laws of the Federal Republic of Germany shall be applicable.  
b) German shall be the contract language, the language of the proceedings and the official court language.
5. The application of the United Nations Convention on Contracts for the International Sale of Goods (CSIG) shall be excluded.
6. The place of performance and jurisdiction shall be KAESER's principal place of business. However, KAESER may alternatively choose to bring an action against the Supplier at the latter's principal place of business or place of performance.