

**I. GENERAL**

This document is an offer by Kaeser Compressors, Inc., of Fredericksburg, Virginia ("Kaeser"), to supply, lease, and/or sell the products, equipment and/or parts that are identified in this document ("Equipment") to the lessee or purchaser, as applicable, identified on the applicable purchase order or rental agreement ("Customer") in accordance with these terms and conditions of sale and use ("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, 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.

**II. DELIVERY**

Unless otherwise agreed to in writing, all Equipment will be delivered FCA US Shipping Point (as shipping term is defined in Incoterms 2010). In the event that scheduled delivery of Equipment is delayed by Customer, Kaeser may store such Equipment for the account of and at the risk of Customer. Kaeser guarantees no delivery dates, as such dates are estimates only, and reserves the right to make multiple deliveries when required due to different shipping points. Delay in delivery of any installment shall not relieve Customer of its obligations to accept remaining deliveries. Kaeser shall not be liable for any losses or damages as a result of any delay or failure to deliver due to any cause beyond Kaeser's reasonable control, including but not limited to any act of God, act of Customer, embargo or other governmental act, regulation or request, fire, flood, hurricane, accident, strike, slowdown or other labor difficulties, war, act of terrorism, riot, delay in transportation, defaults of private or common carriers, equipment failure, or inability to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay. Customer's exclusive remedy for other delays and for Kaeser's inability to deliver for any reason shall be rescission of the underlying order.

**III. TITLE AND RISK OF LOSS**

Risk of loss or damage shall pass from Kaeser to Customer, and delivery shall be deemed to be complete, upon delivery by Kaeser to a private or common carrier, or upon moving into storage, whichever occurs first. Notwithstanding the foregoing provision, all Equipment sold shall remain the sole and exclusive property of Kaeser and shall remain personal property, regardless of mode of attachment to realty or other property, until full and final payment has been made therefor, and all Equipment leased shall remain the sole and exclusive property of Kaeser indefinitely. Customer agrees to execute any security agreements and financing statements or other commercially acceptable document and to perform all acts that may be necessary to perfect and assure retention of title to such Equipment by Kaeser. Customer agrees to do upon request all things and acts necessary or desirable to adequately insure the Equipment against loss or damage, including without limitation obtaining and maintaining casualty insurance policies that are acceptable to Kaeser and naming Kaeser as an additional insured under such insurance policies. Neither party may assign or transfer this Agreement without the prior written consent of the other party.

**IV. PAYMENT**

Unless otherwise agreed to in writing, all invoices shall be paid within thirty (30) days after shipment, or in the case of leased Equipment, upon receipt of the Equipment by Customer. 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 shipment 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 shipments shall be separately invoiced and paid for without regard to subsequent deliveries. 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. 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.

**V. WARRANTIES**

Kaeser warrants the Equipment manufactured by it or its affiliates and sold hereunder to be free from defects in material and workmanship for a period of one (1) year after the date of delivery of the Equipment. Performance representations (if any) are limited to those specifically included in Kaeser's proposal and identified as such. This warranty does not apply to the sale of used Equipment (if any), or to any leased Equipment. Used Equipment (if any) is sold and/or leased AS IS, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. The effects of corrosion, erosion and normal wear and tear are specifically excluded from Kaeser's warranty. Equipment (including accessories, components and parts thereof) sold by Kaeser but manufactured by others is not warranted by Kaeser. Such Equipment (or accessories, components or parts) shall carry the warranty (if any) which the manufacturer has conveyed to Kaeser, to the extent it can be passed on to Customer. Leased Equipment is leased AS IS, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, except that in the event of any defect or failure of performance not attributable to Customer's use of the Equipment or failure to maintain the Equipment, Kaeser shall repair or replace the leased Equipment at Kaeser's option. Customer, and not Kaeser, shall be responsible for the routine maintenance of leased Equipment.

Should any failure to conform with the above warranty occur during the specified period under normal use, and Equipment has been proved to Kaeser's satisfaction to have been properly stored, installed and maintained, then Kaeser shall, with prompt notice by Customer, correct such non-conformities at its option either by repair or replacement of the non-conforming Equipment, or in the case of Equipment sold, by refund of the purchase price of the non-conforming Equipment. Return of Equipment to such delivery point as Kaeser may direct pursuant to this paragraph shall be at Customer's risk and expense (DAP Kaeser's directed delivery point). For purchased Equipment, Kaeser warrants any Equipment repaired or replaced pursuant to the above warranty, under normal use, to be free from defects in workmanship and material for a period of ninety (90) days after the startup of such repaired or replaced Equipment or for a period ending on the expiration of the original Equipment warranty, whichever is longer. Unless otherwise expressly agreed, 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.

Repair, replacement, or refund (whichever Kaeser determines, in its sole discretion, to provide, as applicable) shall be Kaeser's sole obligation and Customer's exclusive remedy for any nonconformity, noncompliance, defect or deficiency in Equipment furnished hereunder, and shall be conditioned upon Customer's return of the defective Equipment to Kaeser at Customer's risk and expense (DAP Kaeser's directed delivery point), unless such return is waived by Kaeser. THE EXPRESS WARRANTY CONTAINED IN THIS SECTION V IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED; AND KAESER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF

Kaeser Compressors, Inc.

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MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

#### **VI. LIMITATION OF LIABILITY**

THE REMEDIES OF THE CUSTOMER SET FORTH HEREIN ARE EXCLUSIVE, AND KAESER'S LIABILITY WITH RESPECT TO EQUIPMENT SOLD AND/OR LEASED HEREUNDER SHALL BE LIMITED TO THE APPLICABLE WARRANTY PROVIDED HEREIN AND, WITH RESPECT TO ANY BREACH OF ITS CONTRACT WITH CUSTOMER, SHALL BE LIMITED TO THE CONTRACT PRICE OF EQUIPMENT THAT IS THE SUBJECT OF THE BREACH (OR, IN THE CASE OF LEASED EQUIPMENT, AMOUNTS PAID TO DATE WITH RESPECT TO SUCH EQUIPMENT); 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 CUSTOMER HAVING ANY RIGHT TO RECOVER DAMAGES (SUBJECT TO THE LIMITATIONS SET FORTH HEREIN), KAESER SHALL HAVE THE RIGHT TO CORRECT ANY DEFECT OR NON-CONFORMITY OF ANY EQUIPMENT SOLD AND/OR LEASED HEREUNDER IN A REASONABLE TIME FRAME, AND IF KAESER DETERMINES THAT IT IS UNABLE OR UNWILLING TO CORRECT ANY SUCH DEFECT OR NON-CONFORMITY, THEREAFTER, 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.

#### **VII. PRICES**

All prices are quoted and payable in U.S. dollars. Quoted prices shall remain open for thirty (30) days' only. All orders are subject to acceptance by an authorized representative at Kaeser's headquarters. The prices quoted do not include shipping costs or 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.

#### **VIII. 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.

#### **IX. PATENT INDEMNITY**

Kaeser shall defend any third-party suit brought against Customer, and shall pay any adverse judgment entered therein, so far as such suit or judgment is based on a claim that the use of Equipment manufactured by Kaeser and sold and/or leased by Kaeser to Customer constitutes infringement of any patent of the United States of America, provided that Kaeser is promptly notified in writing thereof and given authority, information, and assistance for the defense of the same. Kaeser may, at its option, (1) obtain for Customer the right to continue to use Equipment purchased from Kaeser, or (2) modify such Equipment so that it becomes non-infringing, or (3) replace the same with non-infringing Equipment, or (4) remove such Equipment and refund to Customer the undepreciated portion of the purchase price or, in the case of leased Equipment, cancel the lease agreement. THE FOREGOING PROVISIONS OF THIS PARAGRAPH CONSTITUTE THE ENTIRE LIABILITY OF THE COMPANY WITH REGARD TO PATENT INFRINGEMENT. NOTWITHSTANDING THE FIRST SENTENCE OF THIS PARAGRAPH, IN THE EVENT ANY EQUIPMENT (A) IS SOLD AND/OR LEASED BY KAESER TO MEET CUSTOMER'S SPECIFICATIONS OR REQUIREMENTS NOT A PART OF A STANDARD LINE OFFERED BY KAESER IN THE USUAL COURSE OF ITS BUSINESS OR (B) CONTAINS MARKINGS, TRADEMARKS OR LOGOS SPECIFIED BY CUSTOMER, CUSTOMER AGREES TO DEFEND, PROTECT, INDEMNIFY AND HOLD HARMLESS KAESER AND ITS AFFILIATES FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES OR INJURIES (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND OTHER COSTS OF DEFENSE) ARISING OUT OF OR IN CONNECTION WITH A CLAIM, SUIT OR ACTION AT LAW OR IN EQUITY FOR ACTUAL OR ALLEGED INFRINGEMENT, INCLUDING BUT NOT LIMITED TO INFRINGEMENT OF ANY U.S. OR FOREIGN PATENT, BECAUSE OF THE SALE OR LEASE OF SUCH EQUIPMENT, AND TO DEFEND ANY SUITS OR ACTIONS WHICH MAY BE BROUGHT.

#### **X. ENVIRONMENTAL AND OSHA REQUIREMENTS**

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.

#### **XI. REMEDIES AND CANCELLATION**

The rights and obligations of Kaeser and Customer 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 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 signed by an executive officer of Kaeser.

#### **XII. WAIVER**

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.

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