

# Terms and Conditions of Sale of Gas Compressors Limited



## 1. Interpretation

1.1. The definitions and rules of interpretation apply in these conditions.

**Commissioning:** the commissioning of the Goods by Gas Compressors or its representative in accordance with condition 7.1.

**Commissioning Date:** the date of completion by Gas Compressors of Commissioning in accordance with condition 7.1.

**Contract:** the contract between Gas Compressors and the Customer for the sale and purchase of the Goods, incorporating these conditions and any specific conditions in the Specification Document.

**Customer:** the person, firm, company or entity that purchases the Goods from Gas Compressors with whom the Contract is made.

**Delivery Location:** the location at which the Goods are to be installed and / or delivered as detailed in the Specification Document.

**Delivery:** completion of an Order in accordance with condition 4.1.

**Gas Compressors:** Gas Compressors Limited incorporated and registered England and Wales (Company Number: 04025913) whose registered office is at Star Farm, Three Elm Lane, Golden Green, Tonbridge, Kent. TN11 0BE.

**Goods:** any goods agreed in the Contract (including any Services ancillary to such supply) to be supplied to the Customer by Gas Compressors (including any part or parts of them).

**Order:** an order for Goods by the Customer in accordance with clause 2.4.

**Order Acknowledgement:** has the meaning given to it in condition 2.3.

**Services:** any services ancillary to the supply of Goods, agreed in the Contract to be supplied to the Customer by Gas Compressors.

**Specification Document:** means the order form, estimate, specification or quotation document accompanying these terms and conditions.

1.2. Words in the singular include the plural and in the plural include the singular. A reference to one gender includes a reference to the other gender. Condition headings do not affect the interpretation of these conditions.

## 2. Application of terms

2.1. Subject to any variation under condition the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2. These conditions apply to all Gas Compressors' sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of Gas Compressors. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Gas Compressors which is not set out in the Contract. Nothing in this condition shall exclude or limit Gas Compressors' liability for fraudulent misrepresentation.

2.3. Any quotation is given on the basis that no binding contract shall come into existence until Gas Compressors despatches an acknowledgement of order in writing to the Customer (an "Order Acknowledgment"). Any quotation is valid for the period stated in the quotation (where no such period is specified then any quotation is valid for a period of 30 days), provided that Gas Compressors has not previously withdrawn it.

2.4. Each order or acceptance of a quotation for Goods by the Customer from Gas Compressors shall be deemed to be an offer by the Customer to buy Goods subject to these conditions. No order placed by the Customer shall be deemed to be accepted by Gas Compressors until a written acknowledgement of order is issued by Gas Compressors or (if earlier) Gas Compressors delivers the Goods to the Customer.

2.5. The Customer shall ensure that the terms of its order and any applicable specifications, including those contained or referred to in the Specification Document, are complete and accurate.

2.6. Once accepted by Gas Compressors, an Order may only be cancelled or varied by the Customer with the express written consent of Gas Compressors. Where Gas Compressors consents to such cancellation or variation, the Customer shall fully indemnify Gas Compressors in accordance with condition 9.2.

## 3. Description

3.1. The quantity and description of the Goods shall be as set out in the Specification Document and Gas Compressors' acknowledgment of order.

3.2. All samples, drawings, descriptive matter and advertising issued by Gas Compressors and any descriptions or illustrations contained in Gas Compressors catalogues, brochures or on its website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them and they shall not form part of the Contract.

## 4. Delivery

4.1. Unless otherwise agreed in writing by a director of Gas Compressors, delivery of the Goods shall take place and an Order be completed when Gas Compressors notifies the Customer that the Goods are available for collection and/or onward transit.

4.2. Any dates specified by Gas Compressors for delivery of the Goods (including any dates specified in the Specification Document) are intended to be an estimate and time for delivery shall not be of the essence.

4.3. Subject to the other provisions of these conditions Gas Compressors shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Gas Compressors' negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract.

4.4. If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or where applicable Gas Compressors is unable to deliver the Goods on time because the Customer has not provided or procured that appropriate instructions, documents, licences or authorisations are given and in place:

- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by Gas Compressors' negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) Gas Compressors may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.5. Any alternative arrangements for delivery of the Goods must be agreed to in writing by Gas Compressors. In particular that no such alternative arrangements shall affect the transfer of risk and/or ownership in the Goods as provided for in these conditions unless specifically agreed to in writing by a director of Gas Compressors.

## 5. Risk and ownership

5.1. The Goods are at the risk of the Customer from the time of Delivery. Ownership of the Goods shall not pass to the Customer until Gas Compressors has received in full (in cash or cleared funds) all sums due to it in respect of:

- (a) the Goods; and
- (b) all such other sums which are or which become due to Gas Compressors from the Customer.

5.2. Until ownership of the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as Gas Compressors' bailee;
- (b) store the Goods (at no cost to Gas Compressors) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Gas Compressors' property;
- (c) not destroy, deface or obscure any identifying mark on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured on Gas Compressors' behalf for their full price against all risks to the reasonable satisfaction of Gas Compressors. On request the Customer shall produce the policy of insurance to Gas Compressors; and
- (e) not resell the Goods before ownership has passed to it.

5.3. The Customer's right to possession of the Goods shall terminate immediately if:

- (a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between Gas Compressors and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- (c) where the Customer is located or carrying on business in any other jurisdiction, it suffers an event analogous to any of the events described in conditions 5.3 (a) or (b); or
- (d) the Customer encumbers or in any way charges any of the Goods.

5.4. Gas Compressors shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Gas Compressors to the Customer.

5.5. The Customer grants Gas Compressors, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them at the Customer's expense.

5.6. On termination of the Contract, howsoever caused, Gas Compressors' (but not the Customer's) rights contained in this condition shall remain in effect.

## 6. Price and payment

- 6.1. Unless otherwise agreed or varied by a director of Gas Compressors in writing, the price for the Goods shall be the price set out in the Specification Document.
- 6.2. The price for the Goods shall be exclusive of any value added tax and any other taxes or duties, all costs or charges in relation to packaging, loading, unloading, carriage, insurance, the cost of delivery and transportation of the Goods to the Delivery Location, Commissioning and the cost of a representative of Gas Compressors attending the Delivery Location, all of which amounts the Customer shall pay in addition to the price when it is due to pay for the Goods.
- 6.3. Subject to condition , payment of the price for the Goods is payable in the currency stated in the Specification Document or Order Acknowledgement and is due and payable (without set-off, deduction or counterclaim) on the dates and in the manner specified in the Specification Document or Order Acknowledgment. Where the dates of payment are not specified, the Customer shall pay all sums due to Gas Compressors within 30 days of the date of Gas Compressors' invoice in respect of such sums.
- 6.4. Time for payment shall be of the essence. No payment shall be deemed to have been received until Gas Compressors has received cleared funds. All payments payable to Gas Compressors under the Contract shall become due immediately on its termination despite any other provision.
- 6.5. If the Customer fails to pay Gas Compressors any sum due pursuant to the Contract on its due date, Gas Compressors shall be entitled to:
- charge interest on such sum from the due date for payment at the annual rate of 4 % above the base lending rate from time to time of Gas Compressors' bankers, accruing on a daily basis until payment is made;
  - require the Customer to pay any further sums in advance of any dates specified in the Specification Document or otherwise;
  - suspend the supply of the Goods;
  - terminate the Contract, whereupon the Customer shall be liable to fully indemnify Gas Compressors in accordance with condition 9.2.

## 7. Quality and Commissioning

- 7.1. A representative of Gas Compressors shall have the right to visit the Delivery Location (or any other location at which the Goods may be stored or subsequently installed) once the Goods are delivered and / or once installation of the Goods is complete to oversee or view, the manufacturing, the installation and the inspection and testing of the Goods. Upon completion of any such inspection and testing to the satisfaction of Gas Compressors, it shall be entitled to treat the Goods as commissioned and fully functioning.
- 7.2. Gas Compressors warrants that (subject to the other provisions of these conditions) on Delivery, and for a period of 12 months from the earlier of the Commissioning Date or Delivery, the Goods shall:
- be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
  - be reasonably fit for any particular purpose for which the Goods are being bought if the Customer had made known that purpose to Gas Compressors in writing and Gas Compressors has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of Gas Compressors; and
  - be free from defects in design, material and workmanship.
- 7.3. Gas Compressors shall not be liable for a breach of any of the warranties in condition 7.2 unless:
- the Customer gives written notice of the defect to Gas Compressors, and if the defect is as a result of damage in transit such notice must be given within 7 days of delivery of the Goods to the Delivery Location; and
  - Gas Compressors is given a reasonable opportunity after receiving the notice to examine such Goods.
- 7.4. Gas Compressors shall not be liable for a breach of any of the warranties in condition 7.2 if:
- the Customer makes any further use of such Goods after giving such notice; or
  - the defect arises because the Customer failed to follow Gas Compressors' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or is as a result (whether fully or partially) of the Customer's failure to strictly adhere to generally accepted good industry practice or guidance; or
  - the Customer alters or repairs such Goods without the written consent of Gas Compressors.
- 7.5. Subject to condition and condition , if any of the Goods do not conform with any of the warranties in condition 7.2, Gas Compressors shall at its option repair or replace such Goods (or the defective part) provided that, if Gas Compressors so requests, the Customer shall as its own cost, return the Goods or the part of such Goods which is defective, to Gas Compressors. These conditions shall then apply to any repaired or replacement Goods.
- 7.6. If Gas Compressors complies with condition it shall have no further liability for a breach of any of the warranties in condition in respect of such Goods.
- 7.7. Gas Compressors shall not be responsible for (or liable for the costs of) the testing or ensuring that the Goods comply with any safety standards, regulatory requirements or laws. The Customer shall ensure that it obtains, and where

necessary maintains in force, all licences, permissions, authorisations, consents and permits needed for Gas Compressors to supply the Goods to the Customer.

- 7.8. In the event that the Goods are not installed and commissioned at the Delivery Location within 1 month of delivery of the Goods, the Customer shall immediately notify Gas Compressors. Gas Compressors may provide advice in connection with long term storage and suggest modifications to the Goods. Gas Compressors reserves the right to make additional charges in respect of any such advice or modifications.

## 8. Limitation of Liability

- 8.1. The Customer's attention is particularly drawn to the provisions of condition 8 which limits Gas Compressor's liability to the Customer. Accordingly, the Customer is hereby put on notice that it should put in place appropriate insurance.
- 8.2. Subject to conditions and , the following provisions set out the entire financial liability of Gas Compressors (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- any breach of the Contract;
  - any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
  - any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 8.3. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4. Nothing in these conditions excludes or limits the liability of Gas Compressors for death or personal injury caused by Gas Compressors' negligence, or for fraud or fraudulent misrepresentation, or for any matter which it would be illegal for Gas Compressors to exclude or attempt to exclude its liability.
- 8.5. Gas Compressors shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 8.6. Gas Compressor's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price for the Goods.
- ## 9. Termination
- 9.1. Gas Compressors may terminate the Contract and refuse to supply the Goods at any time if the Customer is in breach of any of its obligations under the Contract.
- 9.2. If the Contract is terminated or varied under condition 2.6, 6.5 or 9, then the Customer shall pay for all Goods supplied, and fully indemnify Gas Compressors in respect of all sums due for payment and all costs, charges or losses which arise from commitments entered into by the Gas Compressors in connection with the performance of its obligations under the Contract, and all work carried out by Gas Compressors to the date of termination or variation of the Contract by the Customer.
- ## 10. Intellectual property and confidentiality
- All intellectual property rights in the Goods shall be owned by Gas Compressors. The Customer shall keep in the strictest confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by Gas Compressors to the Customer.
- ## 11. General
- 11.1. Gas Compressors may assign the Contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Gas Compressors.
- 11.2. Gas Compressors reserves the right to defer the date of delivery or to cancel the Contract (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Gas Compressors including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.
- 11.3. Each right or remedy of Gas Compressors under the Contract is without prejudice to any other right or remedy of Gas Compressors whether under the Contract or not. Any waiver by Gas Compressors of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 11.4. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 11.5. All communications sent to Gas Compressors about the Contract shall be in writing in the English language and delivered by hand or sent by pre-paid first class post or sent by fax to the address or telephone number specified in the Specification Document.
- 11.6. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.