

## GENERAL TERMS AND CONDITIONS OF SALE

### 1. Preamble

The terms and conditions hereinafter set forth shall apply to the sale of goods by Kaeser Compressors Canada Inc. ("KAESER"). Such goods shall include all equipment, accessories and spare parts sold.

The prices and information shown in KAESER's catalogues, technical sheets, prospectuses or rates shall not be binding on KAESER. KAESER reserves the right to make all changes of any kind whatsoever to the goods sold.

Any contract, proposal, purchase order, submission, offer to purchase and other document of that nature pertaining to the sale of goods by KAESER ("Contract Document") shall be subject to these general terms and conditions of sale; such Contract Document shall not be binding on the parties until KAESER has accepted same in writing. As for any additional supply or changes made to the goods sold by the Purchaser, the prices and new delivery dates shall be discussed between KAESER and the Purchaser and agreed to by KAESER in writing. In no event shall the conditions for additional supply alter the conditions of the principal Contract Document. Any changes proposed by the Purchaser shall be negotiated with KAESER and be subject to KAESER's written acceptance.

The general terms and conditions of sale shall prevail over any prior agreement, offer or proposal pertaining to the same goods sold; they shall also be binding on the parties and their respective heirs, personal representatives, successors and permitted assigns. The parties acknowledge that there shall be no change, variation or amendment to these general terms and conditions of sale or waiver of any right, privilege or defence by either party unless set forth in writing and duly signed by both parties. It is expressly agreed that no conduct, acceptance, statement or silence by either party shall be deemed to constitute a waiver of the exercise of any right whatsoever, unless consent is given in writing, signed by that party and forwarded to the other party. Should any part of these general terms and conditions of sale be found illegal by the courts having jurisdiction, only the part found illegal shall be deemed to have never existed and the remainder of these general terms and conditions of sale shall continue to be fully enforceable.

The Purchaser shall not assign its rights and obligations under a Contract Document to anyone without KAESER's prior written consent. Any attempted assignment to which KAESER has not consented shall be deemed null and void. If the Purchaser is a legal person, any change in the control (as defined in the *Income Tax Act* (Canada)) of such legal person shall be deemed to be an assignment for which KAESER's prior written consent must be obtained.

### 2. Delivery and Packaging

KAESER agrees to deliver the goods sold to the Purchaser and/or allow it to take possession thereof as soon as possible.

KAESER does not guarantee any delivery date for the goods sold, and the dates and times written on the acknowledgments of receipt of

any Contract Document are estimates only. KAESER reserves the right to make partial shipments of any given order.

The goods sold shall be deemed delivered at KAESER's headquarters located in Boisbriand, Province of Quebec by making the goods sold available to the Purchaser **F.C.A. Boisbriand** in accordance with the provisions of **Incoterms 2000** ("Delivery"). The Purchaser may designate a carrier to take Delivery of the goods sold on its behalf, in which case it shall give written notice to KAESER.

The goods sold shall be delivered in packaged form, in accordance with generally accepted commercial standards of public carriers. If officially requested by the Purchaser, the goods sold may be delivered in special packaging, at the Purchaser's expense.

The goods sold shall be deemed to be in good condition when delivered to the Purchaser. Claims for any defects in the goods sold must be submitted in writing and received by KAESER within 48 hours of Delivery.

It is specifically understood that KAESER shall not be liable for any damage of any nature whatsoever due to any delay or failure to deliver the goods sold, for any reason whatsoever, the Purchaser hereby expressly waiving same.

If the planned Delivery is delayed by the Purchaser, KAESER may store the goods sold at the Purchaser's risk and expense. The storage costs for standard goods shall be 2.5% of the price of the goods sold per month or partial month and shall be non-refundable. KAESER reserves the right to demand higher storage costs for non-standard goods or if storage is not possible through the usual means at KAESER's disposal. Such storage costs shall be payable upon Delivery.

### 3. Ownership and Risk

KAESER shall bear all risk of loss pertaining solely to the goods sold until their Delivery. The Purchaser shall bear such risk of loss once they are loaded or stored if the planned Delivery is delayed by the Purchaser. Without limiting the generality of the foregoing, KAESER shall remain the sole and exclusive owner of the goods sold until full payment of all sums that may be owing to it, regardless of whether or not the goods sold may have been integrated into movable or immovable property. The Purchaser agrees to comply with any obligations arising from a personal guarantee or instalment payment agreement or other commercial document which KAESER may require for purposes of retaining ownership of the goods sold.

The Purchaser acknowledges that KAESER may register a financing statement in the Personal Property Registry pursuant to the *Personal Property Security Act* in effect in the province or territory where the Purchaser's establishment is located, and may renew or amend the said registration at any time, as KAESER may deem necessary or advisable in order to validate, preserve or protect its security interest in the goods sold or render it enforceable. The Purchaser waives all rights to receive from KAESER a copy of any financing statement or any amendment or renewal statement

registered, or any verification statement or other document received at any time respecting the goods sold or the Contractual Document. The Purchaser shall sign and deliver such other documents and provide such other information as KAESER may request in order to validate, perfect, preserve and protect KAESER's security interest in the goods sold, to render it enforceable or to enforce it, in each case in such manner as it may deem satisfactory.

The Purchaser shall not encumber or otherwise grant any charge or security on the goods sold as long as KAESER is the owner thereof.

As long as the goods sold have not been fully paid for, the Purchaser agrees to take out and keep in force, at its expense, general insurance and transportation insurance against all risk of loss whatsoever, including theft and damage, which insurance policy shall contain a replacement value clause for the goods sold. The insurance policy shall contain a clause stating that it shall not be cancelled or allowed to expire without written notice to KAESER from the insurer at least 30 days prior to the date of cancellation or expiration. The Purchaser agrees that the insurance policy shall include an endorsement providing that the indemnity under such insurance policy shall be payable to KAESER as a named insured in the event of a loss.

#### **4. Payment**

The price for the goods sold shall be payable in cash upon Delivery unless KAESER has agreed to a different condition of sale. All invoices shall be paid by the Purchaser immediately upon receipt. If the Purchaser fails to pay its invoices by the due date or if KAESER deems that the Purchaser's financial position has deteriorated prior to Delivery of the goods sold, KAESER may demand that the invoice be settled before Delivery. Any delays caused by the Purchaser shall be at its own expense. KAESER reserves the right to invoice the costs incurred due to such delay, in addition to the storage costs referred to in section 2 hereof. Each Delivery shall be invoiced separately and shall be paid regardless of subsequent Deliveries. Any amounts payable to KAESER that are overdue shall bear interest at a rate of 2% per month, i.e., 24% per annum. Moreover, should the Purchaser fail to pay any amounts payable (or becoming payable) by the due date, it is expressly agreed that the Purchaser shall pay liquidated damages in addition to all outstanding amounts of principal and interest equal to 20% of the said amounts as an administration charge. It is mutually agreed that these liquidated damages represent genuine and pre-estimated damages and are not intended as a penalty.

#### **5. Default**

If the Purchaser fails to strictly comply with the general terms and conditions of sale or with any of the provisions, undertakings, stipulations or conditions of any Contract Document, or if the goods sold and still unpaid for are misused, damaged or destroyed, or if KAESER deems that the goods sold and still unpaid for are in danger of being misused, damaged, destroyed, seized or confiscated, or if KAESER deems that it is being or may be caused harm, then the entire balance of any unpaid invoices shall immediately become due and payable without the necessity for KAESER to decide on its choice of remedy. If the goods sold are seized or confiscated, or if a writ of execution, seizure or other writ is issued in connection with any goods owned by the Purchaser, or if proceedings under any bankruptcy, liquidation or insolvency legislation are instituted by or against the Purchaser, KAESER may, without prejudice to all its other rights and remedies, without the necessity of notice or formal demand and without the necessity of instituting any legal proceedings whatsoever, terminate any contracts and retake

possession of the goods sold, at the Purchaser's expense, either to retain them (together with any amounts already paid on account as liquidated damages) as the owner thereof, or in order to sell them by mutual agreement (otherwise at judicial sale) and claim the outstanding balance in principal, interest, costs, damages and penalties from the Purchaser. It shall also be understood that so long as the Purchaser is in default hereunder, KAESER shall be released from any obligations, undertakings and/or liability to which it might otherwise be bound. All remedies available to KAESER at law or pursuant to any Contract Document shall be cumulative and not alternative. If possession of the goods sold reverts to KAESER further to a repossession, voluntary surrender of such goods by the Purchaser or otherwise, KAESER shall have the option to either retain the goods sold, in which case all previous payments shall be retained by KAESER as payment for the use and depreciation of the goods sold and not as a penalty, or KAESER may resell the goods sold for such amounts and on such conditions as it may deem advisable, at its discretion, and for that purpose such goods may be stored and repaired or reconditioned by KAESER. In making such sale, KAESER may accept other goods in partial payment of the sale price and KAESER shall have the right to auction and purchase any goods at any public sale. From the proceeds of sale KAESER may deduct repossession expenses, namely, expenses for transportation, storage, repair, restocking and sale of the equipment, including judicial and extra-judicial fees and disbursements. Any shortfall shall be paid by the Purchaser, which shortfall shall be subject to interest at the rate stipulated in section 4 hereof. The Purchaser waives all claims for damages or interest or other claims arising from the repossession, removal or resale of the goods sold.

#### **6. Termination by Purchaser**

If the Purchaser fails or refuses to take delivery of the goods sold, the sale of such goods shall be deemed terminated upon simple written notice to the Purchaser from KAESER and the Purchaser shall pay KAESER the following as liquidated damages: (i) for standard goods, an indemnity equal to 25% of the sale price, and (ii) for non-standard goods, special orders and orders for large quantities of standard goods, an indemnity equal to 50% of the sale price. In addition, KAESER may retain any deposit or goods given in exchange. It is mutually agreed that these liquidated damages represent genuine and pre-estimated damages and are not intended as a penalty. KAESER also reserves, in lieu of such liquidated damages, all its other rights and remedies as compensation for damages sustained due to such termination. KAESER shall then be released from all further obligations to the Purchaser.

#### **7. Warranties**

KAESER warrants the goods sold and manufactured by KAESER or its affiliates against defects in manufacturing and workmanship for such periods and on such conditions as are described in the warranties provided by KAESER. Given the broad range of KAESER products, the terms and conditions of warranty may vary depending on the goods. The terms and conditions of each warranty on the goods sold shall be remitted to the Purchaser, and the Purchaser shall take cognizance of same. The terms and conditions of warranty shall form an integral part of these general terms and conditions of sale. Goods manufactured by other parties and sold by KAESER shall be covered by the warranty given to KAESER by the manufacturer, which warranty shall be transferable to the Purchaser.

Any claims regarding defective goods must be made promptly, as and when provided in such warranties. After receiving prompt written notice from the Purchaser, KAESER shall correct the problem, at its sole discretion, either by repairing or replacing the

defective goods, F.C.A. Boisbriand in accordance with Incoterms 2000, or refunding the purchase price for the defective goods. Defective goods shall be returned at the expense and risk of the Purchaser.

KAESER warrants goods that have been repaired or replaced against defects in manufacturing and workmanship under conditions of normal use for a period (i) of 90 days from Delivery of the goods so repaired or replaced, or (ii) ending at the expiry of the original warranty, where the period exceeds 90 days. KAESER shall not be liable for costs of labour or any loss or damage resulting from improper use or maintenance or the repair of goods by anyone not authorized by KAESER.

No warranty shall apply in the event of abuse, improper installation, use not in conformity with KAESER's recommendations, lack of maintenance or improper maintenance of the goods sold or alteration of the goods sold by anyone other than KAESER. Furthermore, the effects of corrosion or normal wear due to the use of the goods sold are specifically excluded from any KAESER warranty. Used goods sold are sold as seen, selected and examined by the Purchaser, with no warranty of any kind whatsoever and at the Purchaser's sole risk.

KAESER makes no explicit or implicit warranty regarding the merchantable quality or fitness of the goods sold for any particular purpose, nor any warranty as to the performance of any particular or specific work and/or task by the goods sold. Nevertheless, KAESER warrants that the goods sold shall comply with the standards in force in Canada as of the date of Delivery and as set out in the technical specifications, if any, accompanying such goods.

KAESER makes no express or implicit warranty other than the foregoing.

The repair or replacement of defective goods covered by KAESER's warranty shall constitute the Purchaser's sole remedy against KAESER and shall constitute KAESER's only obligations regarding the quality of the goods sold and delivered.

#### **8. Disclaimer**

KAESER shall not be liable for any damage, loss, harm or claim of any nature whatsoever that arises or might arise from a defect in the goods sold, the use (or lack of use), utilization or operation of such goods, the Purchaser hereby expressly waiving same.

In any event, KAESER's liability shall not exceed the price of the goods sold and actually paid by the Purchaser.

#### **9. Liability of the Purchaser**

The Purchaser shall be fully and entirely liable, to the complete exoneration of KAESER and KAESER's assigns, for all risk of loss or damage to the goods sold as of their Delivery, and agrees to indemnify and hold harmless KAESER and KAESER's assigns from and against any damage, loss, harm or claim of any nature whatsoever arising from the possession, utilization, use or operation of the goods sold.

Where there is more than one Purchaser, it is understood that they shall all be solidarily liable for the obligations and undertakings arising from these general terms and conditions of sale.

The Purchaser acknowledges that KAESER has no control over the installation, utilization, use or operation of any equipment or other property, which could have an impact on health, safety or pollution, as regulated by the various federal, provincial and local laws and regulations, and accordingly releases KAESER from any and all

liability for compliance with such laws and regulations, whether in terms of warranty, indemnification or otherwise.

#### **10. Prices**

With the exception of special conditions contained in any Contract Document that has been duly accepted by KAESER, the prices for the goods sold shall exclude taxes of any nature whatsoever which are or may be imposed on this sale by the civil authorities having jurisdiction, and all such other costs as the Purchaser may incur after Delivery of the goods sold, including costs of transportation and insurance. The prices for the goods sold are expressed in Canadian dollars.

The taxes imposed by the various levels of government shall be payable by the Purchaser at the rates in force when KAESER accepts any Contract Document.

#### **11. Documentation**

Studies and documents of any nature remitted or transmitted by KAESER shall at all times remain KAESER's exclusive property. Such documentation shall be returned to KAESER upon request and shall neither be communicated to third parties, nor reproduced, nor utilized without KAESER's written authorization.

#### **12. Patents**

KAESER shall take charge of the defence of any claims against the Purchaser and shall pay such compensation as may be ordered pursuant to a judgment by a court of competent jurisdiction in connection with the goods sold or any part thereof manufactured by KAESER and sold to the Purchaser that infringes any Canadian patent, provided KAESER is notified by the Purchaser in writing as soon as possible of any legal proceedings instituted in that regard. KAESER may, at its option, alter the goods sold so as to render them compliant, replace the goods sold with other compliant goods or take back and refund the goods sold. The terms of this section shall constitute the full extent of KAESER's liability for patent infringement. If the goods sold by KAESER are altered to satisfy the specifications or requests of the Purchaser and are not standard KAESER goods, the Purchaser agrees to defend, indemnify and hold harmless KAESER from and against any loss, damage, harm or claim arising from a legal action for alleged patent infringement, whether Canadian or foreign, arising from the sale of such goods.

#### **13. Applicable Law**

These general terms and conditions of sale, their construction, execution, enforcement, validity and effects shall be subject to and governed by the laws applicable in the Province of Ontario. The parties elect domicile in the Judicial District of Toronto, Province of Ontario, and the courts of that judicial district shall have exclusive jurisdiction to hear any dispute, injunction or other remedy related hereto.