

## PLUMMER COMPRESSORS LIMITED - TERMS OF TRADE - APRIL 2010

### 1. Application

- 1.1 These Terms of Trade govern all supplies of compressors and related equipment and components, and pneumatic control equipment and components "Goods" and/or services from Plummer Compressors Limited "Plummer", "we", "us" to the person, firm or body corporate "you", particulars of which are detailed on the Credit Application form preceding these Terms.
- 1.2 These Terms will replace all earlier Plummer Compressors Limited Terms of Trade and any conditions contained in any document used by you and purporting to have contractual effect.
- 1.3 We may vary or amend these Terms of Trade by notice in writing to you at any time. Any variations or amendments will apply to orders made by you after the date of the notice.
- 1.4 Except as provided in clause 1.3 above, any amendment, variation or waiver of these Terms will not be effective unless signed by you and Plummer.

### 2. Price and Orders

- 2.1 The price payable by you in relation to the Goods and/or services ordered is the price prevailing at the date of dispatch and our prices are subject to change without prior notice.
- 2.2 You will, unless otherwise agreed, pay in addition to the price of the Goods and/or services, all GST and any other government duties, levies, or taxes, all freight and transport costs, insurance charges, installation and maintenance costs in respect of the Goods and/or services.
- 2.3 You must place orders for Goods and/or services by using a written purchase order in the form we specify or by supplying us with an authorised company purchase order number.
- 2.4 Each accepted order will constitute a separate contract for the supply of the particular Goods and/or services on these Terms of Trade. We reserve the right to deliver Goods and/or services in instalments, in which case, each instalment will comprise a separate contract and you will pay for each instalment as if it were a separate order.
- 2.5 Our price lists are not an offer to sell the Goods and/or services and we reserve the right, either on account of lack of stock or for any other reason, to refuse to accept any order or any part of an order.
- 2.6 If, through circumstances beyond our control, we are unable to supply to the Goods, then we may cancel your order (even if it has already been accepted) by notice in writing to you. We will be under no obligation to you or any third party for any damages or loss, direct or indirect, resulting from such cancellation.

### 3. Quotations

- 3.1 Quotations provided by us to you are valid for the period stated on the quotation, or where no period is stated the quotation will be valid for a period of 30 days from the date we provide the quotation to you.
- 3.2 We may require you to pay any additional costs resulting from increases in rates of duty, the cost of materials and components, freight and insurance charges and foreign exchange rates even if the increase occurs after you accept our quotation.

### 4. Payment

- 4.1 Unless we have agreed to extend credit to you, you must pay in cash or by credit card before supply.
- 4.2 Where we have agreed in writing to extend credit to you, you must pay in full on or before the 20<sup>th</sup> day of the month following the date of the invoice. Your payment is only made when funds have fully cleared through the banking system into our bank account.
- 4.3 We have sole discretion to determine the amount of credit we will extend to you at any time. We may cancel any order which has not yet been delivered and/or may withhold delivery of further orders if your account exceeds the credit limit set by us.
- 4.4 You agree to pay for the Goods and/or services in full without deduction or setoff.
- 4.5 If payment is not made in full by the due date, we are entitled to charge you interest on the unpaid overdue balance at the rate of 1.5% per month on those unpaid moneys calculated from the date payment was due until full and final payment is made in full and shall accrue after as well as before any court order or judgment. The charging of default interest will in no way imply the granting or an extension of credit from us to you.
- 4.6 We may suspend delivery of further Goods and/or services until you have effected payment in full of all outstanding monies.
- 4.7 We reserve the right to recover from you all expenses and legal costs incurred by us (including solicitor/client costs and debt collector's costs) in relation to obtaining or seeking to obtain remedy of default in payment by you and the enforcement of the Terms of Trade.
- 4.8 Notwithstanding clause 4.2 above, all payments shall immediately become due to us if:
- (a) You refuse to accept delivery of any Goods and/or services;
- (b) We reasonably believe that the information which you have given us in your application for credit is incorrect or no longer correct and you have failed to give us correct information satisfactory to us within 5 days of our request;
- (c) You sell or otherwise dispose of any Goods which have not been paid for without our consent;

- (d) You become insolvent or commit any act of bankruptcy;
- (e) A receiver, liquidator or statutory manager is appointed over any of your assets or undertaking;
- (f) You make or attempt to make an arrangement or composition with creditors; or
- (g) if you fail to comply with any of the provisions of clause 7.

### 5. Risk and Delivery

- 5.1 You are responsible for insurance and risk in the Goods from the time they are received by a carrier for delivery to you or collected by you or your agent.
- 5.2 All claims for damage during delivery or non receipt of Goods and/or services must be made either to us or to the carrier within 3 days of receipt of the Goods or service delivery.
- 5.3 We will make every effort to ensure delivery of Goods is on time, but will not be liable to you for any loss or damage arising in any way from any delay in delivery. Delay in delivery does not entitle you to cancel any order.
- 5.4 We will make every effort to ensure that any labour services quoted are supplied on time, but will not be responsible for any loss or damage to the Purchaser's property caused in any way by delays in service delivery.
- 5.5 Where you ask us to deliver Goods and/or services directly to another person, that person takes possession of the Goods or receives the services for you as your agent, but you are still directly responsible to us under these Terms of Trade.

### 6. Retention of Title – Non PPSA Supplies

- 6.1 This clause 6 shall be applicable to supplies of Goods made by us, if any, to which the Personal Property Securities Act 1999 ("PPSA") does not apply.
- 6.2 Notwithstanding any period of credit and that the Goods have been delivered to you, property and ownership in Goods remains with us and will not pass to you until we receive payment in full of the purchase price of the Goods and all other amounts you owe to us for any reason.
- 6.3 Until property passes to you, you agree that:
- (a) You will keep the Goods insured to their full insurable value against loss or damage in our name as unpaid vendor;
- (b) You hold the Goods as bailee for and are in a fiduciary relationship with us;
- (c) You will keep the Goods separate and readily identifiable while the Goods are in your possession or control; and
- (d) If you have not paid in full for the Goods by the due payment date, we or our agents may, in addition to our other rights, enter your premises or other premises to which you have access and where any of the Goods subject to these Terms of Trade are stored during normal business hours, without notice, and search for and recover our Goods.

- 6.4 Upon default in payment of the purchase price of the Goods by the due payment date we will be entitled to take possession of and at our discretion sell or otherwise dispose of the Goods removed, and credit any sale proceeds toward the moneys owed to us by you without prejudice to any other remedy available to an unpaid vendor at law or equity.

- 6.5 We are not liable for any damage caused to you or your premises in exercising our rights under this clause 6.

### 7. A Security Interest Created

- 7.1 This clause 7 will apply, and clause 6 of these Terms will not apply, to all supplies of Goods made or agreed to be made by us, to which the PPSA applies.
- 7.2 For the purposes of the PPSA, you grant a **security interest** to us in:
- (a) compressors, air pipe systems and related equipment and components; and
- (b) Any Goods for which any of the Goods referred to in paragraph (a) and (b) of this clause 7.2 have been exchanged or traded or that have been acquired in lieu of those Goods;
- sold or supplied by Plummer to secure the price payable for the Goods and any interest or other charges payable in relation to the Goods and to secure all monies payable by you to us at any time on any account. You further agree that our security interest in the Goods extends to the Proceeds as defined in clause 16 of the PPSA of the Goods. You acknowledge that the Security interest will continue until we give you a final release.
- 7.3 We may at our sole discretion and in such manner as we determine allocate payments made by you to outstanding amounts due in relation to any Goods supplied by us.
- 7.4 Until payment is made you will, where the Goods have been purchased for resale, store the Goods separately from goods not supplied by us. You will not move the Goods outside New Zealand and will not do or omit to do, or allow to be done or omit to be done, anything which could adversely affect the Goods or the security interest created by these Terms of Trade.
- 7.5 To the extent permitted by law, if you default under these Terms of Trade or under any other payment obligation to us:
- (a) Each security interest created in favour of Plummer will become immediately enforceable.

- (b) We may, at any time, by notice to you declare all or any part of the moneys owing to you to be due and payable immediately, upon demand or at a later date as we may specify.
- (c) We may:
- (i) Take possession of and either sell or retain the Goods;
  - (ii) Pay any expenses incurred in the exercise of any such powers out of the revenue from, or proceeds of realisation of, the Goods.
  - (iii) Appoint a receiver in respect of any Goods without your consent and any receiver is authorised to do anything referred to in these Terms and otherwise to exercise all rights and powers conferred on a receiver by law.
- (d) You will pay all of our costs, losses and other liabilities including legal expenses on a solicitor-client basis incurred or sustained by us in connection with the exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any right arising pursuant to the security interest granted under these Terms of Trade.
- (e) We:
- (i) have the rights of a natural person in relation to the Goods;
  - (ii) have all other rights conferred by law including under Part 9 of the PPSA in relation to the Goods; and
  - (iii) may, in your name or otherwise, at any time, do anything that you could do in relation to the Goods.
- 7.6 Nothing expressed in the other provisions of this clause 7 limits or otherwise adversely affects our rights under the PPSA.
- 7.7 Where we take possession of the Goods, we may sell the Goods by any means at any time and from any sale proceeds, deduct all costs incurred in connection with the sale and all monies owed even if not due and payable to us by you on any account to the extent to which we have priority over any other interested parties. We may recover from you any shortfall on any sale or attempted sale.
- 7.8 You waive your rights:
- (a) Under Section 114(1) (a) of the PPSA, to receive a Notice of Intention to Sell;
  - (b) Under Section 116 of the PPSA, to receive a Statement of Account;
  - (c) Under Section 120(2) of the PPSA, to receive notice of any proposal of Plummer to retain collateral;
  - (d) Under Section 121 of the PPSA, to object to any of our proposals to retain collateral;
  - (e) Under Section 125 of the PPSA, to not have Goods damaged if we remove an accession;
  - (f) Under Section 129 of the PPSA, to receive notice of the removal of an accession;
  - (g) Under Section 131 of the PPSA, to apply to the Court for an order concerning the removal of an accession;
  - (h) Under Section 132 of the PPSA, to redeem collateral, if we have sold the collateral, or if we are deemed to have taken any collateral in satisfaction or part-satisfaction of your obligations;
  - (i) Under Sections 133 and 134 of the PPSA, to reinstate the Security Agreement; and
  - (j) To receive a copy of the Verification Statement or a Financing Change Statement relating to our Security Interest.
- 7.9 You must give written notice to us immediately in writing upon any change of name of your company.
- 7.10 If requested by us, you must promptly do all things including signing any document and provide all information necessary to enable us to perfect and maintain the perfection of any and each security interest granted to us by you including by registration of a Financing Statement .
- 7.11 Within 2 working days of a written request from us, you will supply us with copies of all security interests registered over your personal property. You authorise your agent to request information from any secured party relating to any security interest which is held in any personal property that is or has been in your possession or control.
- 7.12 You will pay all reasonable costs, including legal costs on a solicitor-client basis, associated with the discharge or amendment of any financing statement registered by us, whether or not the change was initiated by you.
- 8. Warranty**
- 8.1 In respect of Goods manufactured by Kaeser Compressors Australia Pty Limited ("Kaeser") and supplied by us, you will be entitled to the benefit of the Kaeser Normal Warranty and subject to acceptance of your application, to the Kaeser Extended Warranty. We will assist with warranty issues; however all warranty issues are the ultimate responsibility of Kaeser.

**9. Limitation of Liability**

- 9.1 The provisions of the Consumer Guarantees Act 1993 ("CGA") will not apply to any supply of Goods and/or services to you which are not for personal and domestic use. To the maximum extent permitted by law, the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or implied by common law will also not apply and are excluded from these Terms of Trade.
- 9.2 Plummer and its employees, contractors and agents will not be liable to you for damage to, loss of, deterioration, misdelivery, delay in delivery or non-delivery of Goods and/or services however that loss, damage or deterioration is caused or arises. This exclusion of liability includes, but is not limited to, costs including costs of returning Goods to us, consequential loss, loss of profits and damage caused by or arising from delays in delivery, our negligence or otherwise including a failure to do something which should have been done or to prevent something from happening.
- 9.3 In the event that we become liable to you for loss or damage of any nature whatsoever (whether in contract, tort or otherwise), our maximum liability to you is limited to the purchase price of any goods and services supplied to you in the transaction concerned.
- 9.4 Where you purchase any Goods from us for re-supply as, or incorporation into, goods ordinarily acquired for personal household or domestic use or consumption ("Consumer Goods") you warrant that:
- (a) If you supply the Consumer Goods directly to an end user/consumer you will do so using terms and conditions of supply which exclude liability for any claims under the CGA; and
  - (b) If your customer acquires the Goods for re-supply, you will ensure that your customer and each person in the distribution chain will exclude liability in its contract for supply for any claims under the CGA,
- but in each case only where the end user/consumer acquires the Consumer Goods for business purposes, and you agree to indemnify us against any failure by you, your customers or any persons in the distribution chain to properly contract out of liability to business end users/consumers under the CGA.
- 9.4 You indemnify us against all costs including legal costs on a solicitor-client basis, expenses, losses, damages or claims arising in any way as a result of your failure to comply with any part of these Terms of Trade.

**10. Information and Privacy Act**

- 10.1 For the purpose of facilitating the efficient running of our business, you authorize us:
- (a) To collect all information we will require from any third parties and authorize those third parties to release that information to us;
  - (b) To hold all information given by you or any third parties to us;
  - (c) To use that information including giving information to any other person to facilitate collection of debts from you.
  - (d) The information will be collected, held and used on the condition that:
    - (i) it will be held at our office;
    - (ii) it will be accessible to any of our employees and agents who need access to it for the efficient running of our business; and
    - (iii) you may request access to and correction of the information held at any time.

**11. Change of Control**

- 11.1 If you are a company, you warrant to us that there will be no change to the management or control of your company without prior written notification to us. You agree that we may in the event of any change to the management or control of your company require further credit support for your obligations under these Terms of Trade, and you agree to make the further credit support available to us upon being requested to do so. Any failure to provide such further credit support at our request will be treated as a breach of these Terms of Trade by you.

**12. General**

- 12.1 If we fail to enforce any terms or to exercise our rights under these Terms of Trade at any time, we have not waived those rights.
- 12.2 If any provision of these Terms of Trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these Terms of Trade.
- 12.3 These Terms of Trade will be governed by and construed in accordance with the laws of New Zealand. In relation to any legal action or proceedings arising out of or in connection with these Terms of Trade "Proceedings", each party irrevocably submits to the exclusive jurisdiction of the Courts of New Zealand and waives any objections to the Proceedings in any such Court on the grounds of venue or on the grounds that the Proceedings have been brought in an inconvenient forum.

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