

General Sales and Delivery Terms and Conditions

Valid from 1 March 2007

Article 1 Applicability

- 1.1 These Terms and Conditions shall apply to all offers and purchase agreements for goods and/or services (to be referred to as "items") in which Atlas Copco Nederland B.V. (hereinafter to be referred to as "Atlas Copco") acts as a provider or seller.
- 1.2 Deviations from these Terms and Conditions may only be agreed to in writing.

Article 2 Formation of purchase agreements

- 2.1 Offers
An offer by Atlas Copco shall be without obligation, unless otherwise expressly apparent from the offer.
- 2.2 Agreements
If the agreement is entered into in writing, it shall be formed on the date the contract is signed by Atlas Copco or the date the written confirmation of the instruction is sent by Atlas Copco.
- 2.3 Acceptance by Atlas Copco may occur through any means of communication. This shall likewise apply if the order or instruction has been placed by the buyer electronically. The order placed by the buyer may also be accepted by sending the items to the buyer.
- 2.4 By placing any follow-up order with Atlas Copco, the buyer shall accept the applicability of these General Terms and Conditions.

Article 3 Prices

- 3.1 The prices shall be net in euros, exclusive of VAT and "ex warehouse Zwijndrecht, the Netherlands." If delivery in another manner besides "ex warehouse" has been agreed on, the additional costs, including transport and insurance costs, shall be for the buyer's account.
- 3.2 If, after the date the agreement is formed, one or more cost factors increase – even if this occurs as a result of foreseeable circumstances –, Atlas Copco shall be entitled to increase the agreed price accordingly.
- 3.3 Insofar as seaworthy packaging is not involved, packaging shall be included in the price. Seaworthy packaging shall be charged separately. Packaging shall never be taken back.

Article 4 Delivery / Delivery period

- 4.1 For the interpretation of the delivery terms, the "most recent Incoterms" issued by the International Chamber of Commerce shall apply.
- 4.2 The delivery period shall commence on whichever of the following dates is the latest:
 - a. the date the agreement is formed;
 - b. the date Atlas Copco receives the documents, information, permits and so forth necessary to carry out the instruction;
 - c. the date the formalities necessary for commencing the work are fulfilled;
 - d. the date Atlas Copco receives what must be paid in advance under the agreement before the work commences. If a delivery date or week has been agreed on, the period between the date the agreement is formed and the delivery date or week shall constitute the delivery period.
- 4.3 The delivery period shall be based on the work conditions applicable at the time the agreement is concluded and the delivery

on time of the materials ordered by Atlas Copco to perform the work. If, through no fault of Atlas Copco, a delay occurs because of a change in the aforementioned working conditions or because the materials ordered in time to perform the work are not delivered on time, the delivery period shall be extended insofar as required in Atlas Copco's judgment.

- 4.4 Unless expressly agreed otherwise, all delivery deadlines applied by Atlas Copco shall be target deadlines and shall therefore not be strict deadlines.
- 4.5 The product shall be considered delivered with respect to the delivery period when it, if a check at Atlas Copco's company has been agreed on, is ready for the check and, in other cases, when it is ready for shipment, all of this after the buyer has been informed, and without prejudice to Atlas Copco's having to fulfil its assembly and/or installation obligations, if any.
- 4.6 The delivery period shall likewise be extended by the duration of the delay arising as a result of the buyer's failure to fulfil any obligation ensuing from the agreement or failure to provide the assistance required of it regarding satisfying the terms of the agreement.
- 4.7 Except in the event of gross negligence on Atlas Copco's part, the fact that a delivery period has been exceeded shall not entitle the buyer to terminate the agreement in whole or in part. The fact that a delivery period has been exceeded – for whatever reason – shall not entitle the buyer to, without court authorisation, perform work (or cause work to be performed) to carry out the agreement.
- 4.8 A contractual penalty imposed for the delivery period being exceeded must be deemed to replace any right of the buyer to compensation. Such a penalty shall not be owed if the delivery period is exceeded because of force majeure or a reason referred to in paragraphs 3 or 9 of this Article.
- 4.9 Subject to the provisions in this Article, Atlas Copco shall be entitled to suspend performance of its obligations vis-à-vis the buyer for as long as the buyer has not fulfilled any or all of its payment or other obligations under any legal relationship existing with Atlas Copco. This suspension shall apply until the buyer has completely fulfilled its obligations vis-à-vis Atlas Copco. Any agreed delivery period shall be extended on account of the suspension by the duration of the suspension.

Article 5 Transfer of risk and title

- 5.1 Immediately after the item is considered as having been delivered according to Articles 4.3 and 4.9, the buyer shall bear the risk for all direct and indirect damage arising to or because of this item, except insofar as this is attributable to gross negligence on the part of Atlas Copco. If, after receiving a notice of default, the buyer still does not take possession of the item, Atlas Copco shall be entitled to charge the buyer the costs of storing the item. In addition, from the delivery date to the date possession is taken, the buyer shall owe statutory interest plus 3% on the entire outstanding amount, as long as payment of the purchase price as agreed on in the purchase agreement has not occurred.
- 5.2 Subject to the provisions in the previous paragraph and in Articles 4.3 and 4.9, title to the item shall not be transferred to the buyer until everything owed by the buyer to Atlas Copco on account of deliveries or work,

including interest and costs, has been paid to Atlas Copco in full.

- 5.3 At Atlas Copco's request, the buyer must furnish alternative security for Atlas Copco, if, for whatever reason, Atlas Copco's retention of title is extinguished. This alternative security may consist of creating a nonpossessory pledge on all movable or other property referred to in Article 5.1.
- 5.4 If appropriate, Atlas Copco shall be entitled to unimpeded access to the item. The buyer shall fully cooperate with Atlas Copco in order to provide Atlas Copco the opportunity to assert the retention of title included in paragraph 2 by retrieving the item, including any dismantling necessary in that regard.

Article 6 Payment

- 6.1 Payment shall occur after delivery, within 20 days after the invoice date, unless partial payments on dates prior to the delivery have expressly been agreed on. In such a case, payment shall be made after receipt of the invoice, before or on the agreed date. If payment is not made on time, the buyer shall be in default by operation of law, without any notice of default being required, and the buyer must pay statutory interest plus 3% on the amount owed for the duration of the default, as well as all legal and other costs related to collection of its claim, with such other costs reasonably being set at 15% of the outstanding amount, and without prejudice to Atlas Copco's right to charge the buyer the costs actually incurred, including any legal costs, if these exceed the amount so calculated. All payments must be made, without any deduction or set-off, at Atlas Copco's offices or to an account to be designated by Atlas Copco.
- 6.2 Unless it receives Atlas Copco's express written permission, the buyer may not set off its payment obligation vis-à-vis Atlas Copco against a claim of the buyer against Atlas Copco on any account whatsoever.
- 6.3 Atlas Copco shall be entitled to demand a pre-payment, cash payment or security for payment from the buyer at any time.

Article 7 Inspection, checking, testing

- 7.1 The items shall be inspected and tested carefully by Atlas Copco before delivery. If additional inspections, checks or tests have been agreed on, Atlas Copco shall determine when these may be conducted and shall inform the buyer of this. The buyer or a representative designated by the buyer shall be entitled to be present during the inspection, check or test. The inspection, check or test shall be conducted regardless of whether the buyer exercises its aforementioned right. The results shall be provided to the buyer.
- 7.2 If the inspection, check or test must be performed in whole or in part by one or more persons who are not employed by Atlas Copco, and they do not appear at the aforementioned time, then the inspection, check or test shall be deemed to have taken place to the buyer's satisfaction, unless, within three days after learning of the non-appearance, the buyer states that the inspection, check or test must still take place.
- 7.3 If and insofar as a check or inspection at Atlas Copco's company has not been agreed on by Atlas Copco, the buyer shall check the items within five days after delivery as referred

General Sales and Delivery Terms and Conditions

- to in Articles 4.3 and 4.9, unless a longer period has expressly been agreed on.
- 7.4 If this period has expired without a written and itemised report of justified complaints, the items shall be deemed to have been accepted.
- 7.5 Subject to Atlas Copco's obligation to fulfil its warranty obligations, acceptance in accordance with the previous paragraphs shall preclude any claim by the buyer regarding a breach of performance by Atlas Copco.
- 7.6 The presence of a defect shall never entitle the buyer to suspend or set off its payment obligations regarding goods delivered or furnished, products, or work and/or services performed.

Article 8 Properties for use, warranties

- 8.1 The values of the properties for use as stated by Atlas Copco with regard to machinery shall be based on Atlas Copco's experience and, as such, shall be as Atlas Copco would expect under the conditions of Atlas Copco's standard tests. These tests shall be based on internationally accepted standards.
- 8.2 It shall be the buyer's responsibility to determine whether the capacity and properties for use of the compressed-air machinery are suitable and legally permissible for the use the buyer envisages. Atlas Copco shall not accept any liability whatsoever in this respect.
- 8.3 If, upon delivery, the machinery turns out to be incapable of achieving the values (subject to the tolerances stated with these values) referred to under paragraph 1 of this Article, the buyer shall enable Atlas Copco to take such measures within a reasonable period which allow these values to be satisfied. If this does not prove possible, the machinery shall, at Atlas Copco's option, either be replaced by machinery which does satisfy the agreed values or be taken back by Atlas Copco with a refund of that portion of the purchase price which has already been paid, without Atlas Copco otherwise being obliged to pay any compensation.
- 8.4 Subject to the provisions in the previous paragraphs, Atlas Copco shall not have any other obligation regarding the items delivered by it besides those ensuing from its warranty obligation as described below and/or described in the warranty certificate delivered by it with the items, provided the conditions contained therein are observed.
- 8.5 If, within a 12-month period after delivery as referred to in Article 4.3, machinery turns out to exhibit defects as a result of the use of improper materials or defects in workmanship, these items shall, at Atlas Copco's option, be repaired or replaced, provided:
- the buyer or end user has followed Atlas Copco's instructions regarding use, maintenance and operation;
 - the defect is not the result of incorrect or improper use or incompetent actions performed on the items and
 - Atlas Copco has been given written notice of the defects by the buyer or end user within five days of the date on which the defects were discovered or reasonably could have been discovered.
- 8.6 The warranty shall likewise not encompass defects occurring in whole or in part because of:
- use of the items in a manner other than the expected normal use;
 - normal wear and tear;
 - repairs by third parties, including the buyer or end user;

- d. parts procured by Atlas Copco from third parties, insofar as the third party has not furnished any warranty to Atlas Copco.
- 8.7 For items located in the Netherlands, this warranty shall include the costs of materials and labour, insofar as the repairs are made at Atlas Copco's workshop. For items located outside the Netherlands, this warranty shall only include the costs of materials. If the buyer or end user sends the items at its expense to one of Atlas Copco's branches in the Netherlands, and the items are sent and received consistent with Atlas Copco's instructions, the warranty shall include the costs of both materials and labour.
- 8.8 If, when the items are repaired or placed, more than six months of the original warranty period have lapsed, the warranty period for the replaced or repaired parts shall be extended, until six months after delivery of the replaced or repaired parts.
- 8.9 Unless expressly stated in the agreement, warranties shall not be given for second-hand items.
- 8.10 If the buyer does not fulfil any obligation or obligations properly or on time, Atlas Copco shall not have any warranty obligation.

Article 9 Liability

- 9.1 Atlas Copco's liability shall be limited to fulfilment of the warranty obligations described in Article 8 of these Terms and Conditions.
- 9.2 Except in the event of gross negligence on Atlas Copco's part, and subject to the provisions in the previous sentence, any liability by Atlas Copco regarding matters such as loss of profits, other indirect damage and damage resulting from liability vis-à-vis third parties, shall be excluded. Atlas Copco shall therefore not be liable for:
- infringement of patents, licences or other third-party rights resulting from information furnished by or on behalf of the buyer;
 - damage or loss, whatever the cause, of raw materials, semi-finished products, moulds/tem plates, tools and other items provided by the buyer.
- 9.3 If, without being instructed to assemble items, Atlas Copco nevertheless provides help and assistance – of whatever nature – with assembly, this shall occur at the buyer's risk.
- 9.4 If and only if it is judicially established that, despite the provisions in paragraphs 1 and 2, Atlas Copco is liable for any damage, Atlas Copco's total liability shall be limited to compensating direct damage, up to at most an amount equalling the price (exclusive of turnover tax) stipulated for such performance and/or delivery.
- If the agreement is primarily a continuing performance agreement with a term exceeding one year, the aforementioned amount shall be set at the total of the payments (exclusive of turnover tax) stipulated for one year.
- The total compensation for direct damage, however, shall never exceed one hundred thousand euros (EUR 100,000) per year.
- For purposes of this Article, "direct damage" shall solely mean:
- the reasonable costs the buyer has incurred in order to have Atlas Copco's performance conform to the agreement concluded;
 - reasonable costs incurred to ascertain the cause and scope of the damage, insofar as such ascertainment relates to direct damage within the meaning of this Article;
 - reasonable costs incurred to avoid or limit damage, insofar as the buyer demonstrates that

- these costs limited direct damage within the meaning of this Article.
- 9.5 Atlas Copco's total liability for damage on account of death or physical injury or for material damage to goods shall not in any event exceed the amount paid out under Atlas Copco's insurance.
- 9.6 Atlas Copco shall not be liable at any time for indirect damage, including consequential damage, lost profits, lost savings, loss due to business interruption or any other damage besides that referred to in Articles 9.4 and 9.5.
- 9.7 For any right to compensation to arise, the buyer must always report the damage in writing to Atlas Copco as soon as possible after it arises.
- 9.8 A series of related events resulting in damage shall be considered a single event for purposes of application of this Article.
- 9.9 The buyer must indemnify or compensate Atlas Copco with respect to any third-party claims for compensation of damage for which Atlas Copco's liability has been excluded in relation to the buyer under these Terms and Conditions.

Article 10 Force majeure

- 10.1 For purposes of Article 4, "force majeure" shall mean any failure to satisfy the agreement which cannot be attributed to Atlas Copco or the buyer, because it is not due to the fault of Atlas Copco or the buyer, nor the responsibility of Atlas Copco or the buyer by virtue of the law, legal act or generally accepted practices.
- 10.2 In the event of a temporary situation of *force majeure*, including a situation in which a product ordered by the buyer is temporarily undeliverable, Atlas Copco shall be entitled to extend the envisaged delivery period under Article 4 by the time during which the temporary situation continues.
- 10.3 In the event of a permanent situation of *force majeure*, including a situation which is beyond Atlas Copco's or the buyer's control, or which they cannot reasonably control, and which makes it impossible to deliver or furnish products or to perform work and/or services, Atlas Copco or the buyer shall be entitled to terminate the agreement extrajudicially. In a *force majeure* situation, the buyer may not claim any compensation from Atlas Copco for the damage suffered by it.

Article 11 Confidentiality, intellectual property

- 11.1 All intellectual or industrial property rights and similar rights with regard to goods or products delivered and/or furnished by Atlas Copco to the buyer or for work and/or services performed for the buyer shall be held exclusively by Atlas Copco.
- 11.2 With respect to third parties, the buyer must maintain the confidentiality of all drawings, descriptions, specifications, designs, constructions, diagrams, technical documents and other business information as well as know-how in the broadest sense of the word from Atlas Copco of which it has been informed or become aware in any manner.
- 11.3 Unless expressly agreed otherwise in writing, no provision whatsoever in the agreement concluded with the buyer or agreements between Atlas Copco and the buyer ensuing from this shall constitute a full or partial transfer to the buyer of the rights

General Sales and Delivery Terms and Conditions

referred to in Article 11.1. The buyer recognises these rights and shall refrain from any type of direct or indirect infringement of these rights, under pain of forfeiture of a penalty, due and payable in full, of EUR 25,000 for each breach or each week that the breach continues, without prejudice to Atlas Copco's other rights in this regard, including the right to fulfilment of obligations and/or full compensation.

- 11.4 If the buyer becomes aware that third parties are infringing the rights referred to in Article 11.1, the buyer must immediately inform Atlas Copco of this in writing. Unless it receives written permission from Atlas Copco, the buyer shall not in any manner whatsoever itself take legal or other action against such infringement. If Atlas Copco decides to take legal or other action against infringing third parties, the buyer shall, at Atlas Copco's expense, fully cooperate as requested by Atlas Copco.

Article 12 Transfer of rights and obligations

Atlas Copco shall be entitled to transfer to one or more third parties the right to fulfil its obligations and/or to exercise its rights under this agreement. Atlas Copco shall furnish written notice of any such transfer to the buyer.

Article 13 Non-performance, termination of agreement

- 13.1 Atlas Copco shall be entitled to terminate the agreement with the buyer with immediate effect for the future through written notice, without any prior notice of default, or to cease further deliveries or performance of work and/or services, without being obliged to pay any compensation, and without prejudice to its other rights, if:
- despite a proper notice of default, the buyer breaches any obligation it has;
 - a temporary or permanent suspension of payments is granted to the buyer or it is put into liquidation or declared bankrupt, or the buyer files a petition for application of the debt rescheduling scheme, or the buyer is placed under guardianship or administration;
 - an attachment is made against the buyer or its property regarding substantial debts, and this attachment is maintained for more than two months;
 - the buyer ceases or otherwise winds up its business operations in whole or in part, and/or fundamentally changes its business activities or transfers these to a third party without Atlas Copco's prior written permission.
- 13.2 All claims which Atlas Copco has against the buyer in these situations shall be immediately due and payable in full.
- 13.3 Atlas Copco shall never owe the buyer any compensation or payment on account of the aforementioned termination of the agreement, without prejudice to Atlas Copco's right to full compensation because of the buyer's breach of its obligations as referred to above and without prejudice to Atlas Copco's other rights.

Article 14 Delay, cancellation

- 14.1 If and insofar as the buyer wishes to suspend taking possession of the item, the buyer shall owe Atlas Copco storage costs for the entire delay period, without prejudice to the buyer's obligation to pay the full purchase price to Atlas Copco in accordance with the provisions in Article 6. The storage costs shall be invoiced

to the buyer monthly.

- 14.2 If and insofar as the buyer wishes to cancel taking possession of the item, or at least an item included in the purchase agreement, the buyer shall owe Atlas Copco compensation equalling the costs incurred by Atlas Copco up to the time of cancellation, such costs amounting to at least 30% of the purchase price.
- 14.3 Cancellation must occur by means of a registered letter from the buyer to Atlas Copco's address.

Article 15 Applicable law, disputes

- 15.1 Dutch law shall solely apply to the agreement and any later agreements.
- 15.2 Subject to the applicability of paragraph 3 of this Article, all disputes arising in connection with an agreement to which these Delivery Terms and Conditions apply in whole or in part, or in connection with later agreements ensuing from such an agreement, shall be settled exclusively by the competent court in The Hague, the Netherlands, unless Atlas Copco opts to apply to the court designated by law.
- 15.3 Insofar as the disputes described in the previous paragraph fall within the subject-matter jurisdiction of the Sub-District Court under the rules of Dutch civil procedural law, then the District Court, Sub-District Section, may settle the dispute.

Atlas Copco Nederland B.V.

Merwedeweg 7

3336 LG Zwijndrecht

Telephone: +31 (0)78 6230230

Fax: +31 (0)78 6100670

E-mail: info@nl.atlascopco.com

www.atlascopco.nl

Atlas Copco