

GENERAL BUSINESS AND DELIVERY TERMS AND CONDITIONS

I. General

The general business and delivery terms and Terms and Conditions (hereinafter referred to as Terms and Conditions) govern in a binding way the sales and purchase of goods (product) between the Purchaser and Seller when the Seller is: **Atlas Copco Romania srl Reg no 17479588**, with registered office Sos Bucuresti-Ploiesti nr 135, Corp2, Sector 1, Buharest, Romania.

(hereinafter referred to as Seller, Purchaser or contracting parties or the other party).

The provisions differing from these Terms and Conditions, are valid and take precedence over the clients only when they are explicitly written in the purchase or other contract and confirmed in writing by the Seller.

The technology equipment, products, spare parts, repairs services and rental services sold or provided by the Seller to the Purchaser pursuant to a concluded purchase or other contract are called Product for the purpose of these Terms and Conditions.

I. Concluding purchase or other contract

The Purchaser shall files a binding request for a delivery of a product primarily by means of a written purchase order, in which he specifies the numeric code of the previous written offer of the Seller.

The binding relationship arises from conclusion of a purchase or other contract or acceptance of the purchase order of the Purchaser in which the Purchaser states a concrete numeric code of the offer of the Seller or acceptance of the order processed by the seller, based on the purchase order of the Purchaser.

The purchase or other contract arises also in case the Seller, based on the purchase order of the Purchaser, delivered the product and the Purchaser took it over in a documented way.

The orders are executed subject to the availability of the products or the personnel required to render the services and to the express agreement of the legal representative of the seller. Verbal agreement with regard to an order has to be validated by a written acceptance of the relevant order, in default of such a written agreement the order is not considered confirmed.

II. Purchase price

All prices listed in the price list or other materials of the Seller are only indicative and the Seller has no obligation to sell or lend the products for these prices.

The purchase price or other price is defined by agreement of the contracting parties and it cannot be changed without written consent of both contracting parties.

For the purposes of the purchase or other contract, only the prices specified in the written concrete Confirmation of the purchase order of the Purchaser, which usually includes details on a particular deal, particularly the date of the purchase order, number of the purchase order, technical specification of the product (description of the item and its order number), price and terms and Terms and Conditions of the payment, amount and delivery date.

The contracting parties agree that the Confirmation of the purchase order or a purchase order of the Purchaser, specifying the numeric code of the offer of the Seller represents a sufficient evidence of the contents of the concrete purchase or other contract, whereas all questions not regulated therein are governed by these Terms and Conditions.

The purchase or other price doesn't include the costs of the transport of the product to the Purchaser if it is not agreed otherwise.

The Purchaser shall pay the agreed price based on an invoice issued by the Seller via a bank transfer to the bank account of the Seller and in the same currency as stated on the Seller's invoice. Crediting the price of the product on the bank account of the Seller is considered the payment. The Seller reserves the right to invoice also partial deliveries of the product as long as they were agreed between the Seller and the Purchaser.

The costs of the cross-border banking as well as all fees of its (sending the payment) bank, collateral transport fees, customs and other fees and related risks are born by the Purchaser if the respective regulations don't specify otherwise.

If it is not specified otherwise the purchase or other price is payable within 30 calendar days from the date of issuing the respective invoice by the Seller, while the Seller is entitled to issue the invoice not earlier than on the day specified in the contract or on the day it hands the product over to the Purchaser for its

disposal or on the day when the product was handed over to the contractual carrier of the Seller for shipping to the destination.

The Purchaser is not entitled to withhold any payment for the Seller or any part thereof, for the reasons arising of counterclaims following from defects of the product or the defects of the delivery thereof.

The Seller and the Purchaser agreed that the Seller is entitled to count in unilaterally all legitimate receivables owed by Purchaser, including financial receivables against those non-financial and receivables payable against those not yet payable.

The Seller can require an adequate forward payment for the purchase or other price and the Purchaser is obliged to provide it.

The ownership rights to the product transfers on the Purchaser at the moment when the purchase or other price, its accessories and all legitimate receivables related thereto have been paid in full. In case the Purchaser is in a delay with the payment of the price for a delivered product for more than 60 days after the payment maturity date the Purchaser agrees that the Seller may forbid further use or processing of the unpaid product delivered by the Seller, and subsequently gives the Seller its consent to take and ship away all the product. The Purchaser states that in such case it will pay the Seller all costs it purposefully spent in connection to this activity.

In case of a delay of a payment of the purchase or other price on the side of the Purchaser, the Seller is entitled to withhold so far pending deliveries to the Purchaser based on the purchase or other contract, without this constituting a breach of the concluded contracts or the right to withdraw from them.

The Seller and Purchaser agreed a contractual interest on late payments of the price of the delivered products to amount to 15 % p.a. and contractual penalty amounting to 1.5% from the unpaid price of the product for each calendar week (including an incomplete one) of the delay of the payment of the payable price of the product on the side of the Purchaser. The Seller and the Purchaser agreed on the right of the Seller for a compensation for its own costs related to enforcement of the late payments of the price charged by the invoice for the product, as well as the right for compensation for external costs related to enforcement of the late payments amounting to 9% from the price charged by the invoice for the product enforced from the debtor (Purchaser).

This doesn't affect the right of the Seller for compensation of a damage caused this way.

The basis for payment of the contractual interests from late payments and the contractual penalty is the billing. In case the Purchaser doesn't file objections against accuracy of the billing of the contractual interests from late payments and the contractual penalty before their due term, it is assumed that the Seller and the Purchaser agreed that these contractual interests from late payments and the contractual penalty are charged and enforced by the Seller legitimately and their amounts are correct.

In case the Seller is in delay with the delivery of the product to the Purchaser pursuant to the concluded purchase or other contract, the contracting parties agreed on a contractual penalty, whereas the Purchaser is entitled to a contractual penalty of 0.5% of the purchase price of the undelivered product for each full week of delay. The parties hereby agree that the overall amount of the due penalties cannot exceed 5% of the purchase price.

Under the agreed condition of their validity the Purchaser has to claim these property sanctions from the Seller within 120 calendar days from the fulfilment of the contractual terms of the Seller under the concluded purchase or other contract in accordance with these Terms and Conditions.

III. Delivery terms

The delivery of the product is governed by the INCOTERMS 2010 terms, DAP – DELIVERED AT PLACE clause (with delivery at the specified location).

The Seller is obliged to deliver the product within the terms agreed upon in the Confirmation of the purchase order.

The delivery periods start at the moment when all details of the purchase or other contract are agreed and clarified, all payments payable at the conclusion of the contract have been paid and all the required permits for performance of the contract have been issued.

The transport of the product is performed by the Seller using its contractual carrier, if not agreed in writing otherwise.

And product delivery date is the day when the Seller hand the product over to the Purchaser for its disposal on the transport vehicle of the contractual carrier of the Seller, ready for unloading at the agreed destination or as agreed in the Confirmation of the purchase order.

The obligation of the Seller to deliver the product is deemed performed in due and timely manner even in case the Seller enabled the contractual carrier of the Seller to take over the product but the product has not been taken over by the carrier without any default on the Seller's side.

The delivery periods shall be extended for the period of delay on the side of the Purchaser, when the Seller cannot deliver the product in due and timely manner due to the delay of the Purchaser.

The Seller is not obliged to deliver the ordered product if the Purchaser is in delay with any contractually agreed upon payment for a delivered product.

The moment of transfer of the risk of accidental destruction, risk or damage of the product is always the moment when the Seller hand the product over for the Purchaser's disposal on the transport vehicle at the contractually agreed place of product handover.

The Purchaser is obliged to take over the product at the agreed upon place within 3 days from the delivery day and subject it to an immediate expert inspection.

In case the Purchaser doesn't take over the product which doesn't exhibit obvious defects within 3 calendar days from the day of delivery of the product to the Purchaser, the Seller is entitled besides the purchase or other price of the product, to charge also the contractual penalty for the breach of this obligation of the Purchaser, which covers actual spent costs of the subsequent handling and storing the product in the storage of the Seller or a third person.

In this case the Seller isn't liable for defects that cannot be avoided due to this way of storing the product, such as atmospheric corrosion, mechanical deformation of the product etc.

At the same time the Seller reserves the right to withhold the ordered product until the Purchaser pays the costs the Seller incurred due to this situation.

In case the product is delivered to the Purchaser in several partial deliveries or before the date agreed in the Confirmation of the purchase order, the Purchaser is obliged to take over the product or a part thereof from the Seller or take it over from the carrier at the agreed destination.

Drawings, documentation and information of technical nature handed over by one of the parties to the other party remain a property of the party which handed them over and without consent of the handing over party they must not be used for any other purpose, than for which they have been provided including the prohibition of copying, reproduction, transfer or disclosure and handing over to a third party under a penalty of 50% of the price of the product.

The above mentioned provision doesn't affect the right of the Seller for compensation of the damage it suffered this way.

The delivery includes the documents pursuant to the INCOTERMS 2010 rules, clause DAP – DELIVERED AT PLACE, or the documents agreed upon in the Confirmation of the purchase order, in the purchase or other contract, including the drawings and other information required for installation and ensuring the operation of the product. The Seller is not obliged to provide the Purchaser with originals or copies of the production drawings of the product or spare parts thereof.

The delivery and take-over of the product is confirmed by the Purchaser in the delivery note of the Seller's carrier including the transport ID number.

Considering the specificity of the products (and the fact that there are manufactured based on orders), the parties hereby agree that delayed delivery is not a sufficient reason to cancel an order.

Delivering the product with defects is not considered a substantial breach of the purchase or other contract concluded according to these Terms and Conditions.

IV. Withdrawal and termination of the purchase or other contract

The Purchaser is entitled to cancel the delivery of the product based on a concluded purchase or other contract, only with a written consent of the Seller. In such case the Purchaser is obliged to pay the Seller a compensation of all costs related to cancellation of the deal.

The Seller is entitled to withdraw from the contract in case of a material

breach of the contractual obligation of the Purchaser:

- to pay the price of the product later than 15 calendar days after the maturity date of the purchase price including partial deliveries of the product,
- to take over the product later than 5 days after the delivery of the product
- for the Purchaser to inform on any of the specified facts in writing and without unnecessary delay: cancellation of the company of the Purchaser with winding up, appointment of a receiver over the property of the Purchaser, restructuring of the company of the Purchaser, cancellation of the company of the Purchaser without winding up, change of a legal form of the company of the Purchaser, change of the registered office of the company of the Purchaser or a change of its mail address.

The Purchaser is entitled to withdraw from the contract in case the Seller:

- is in delay with the delivery of the goods according to the Confirmation of the purchase order for more than 30 days,
- delivers a demonstrably defective product or a part thereof amounting over 25% of the particular delivery.

The withdrawal from the contract comes to force on the day of documented delivery of the expression of the will to withdraw from the contract to the other party.

Without prejudice to the provisions of this Article, neither of the parties is entitled to withdraw from or to terminate unilaterally the contract or the Confirmation of the purchase order and the parties undertake in this sense not use any dispositive legal provisions, which would empower them to do so.

V. Defects of the goods, complaints and rights based on the defects of the goods

The Seller grants warranty for the quality, i.e. that the delivered product will be fit for the usual purpose for the given period of time and that it will have the agreed characteristics. The warranty period is 12 months from the day of delivery of the product to the Purchaser. For the purpose of the purchase contract the Seller and the Purchaser can agree a different warranty period.

The liability of the Seller for defects which are subject to the quality warranty doesn't arise when the defects were caused by:

- Unqualified maintenance, incorrect installation or modification or repair or any use or handling of the product which is in contrary to the applicable technical standards, professional knowledge and experience in the field,
- External events, e.g. temperature, chemical, or mechanical damage if they occurred, after the transfer of the risk of damage to the product to Buyer,
- Unsuitable storage, handling, transport, use, installation or inspection of the quality of the product, installing the supplied product with an unauthorized product or repair of the product without the prior written consent of Seller,
- As a result of normal wear and tear of parts of the product or the product as a whole.

The Purchaser is obliged to carry out inspection of the product in order to detect any obvious defects as soon as possible after the risk of damage to the product is transferred. In the case of transport of the product by the Seller, the Purchaser is obliged to inspect the product immediately after it is possible to unload the product of the transport vehicle. The Purchaser is obliged to indicate obvious defects of the delivered product at the take-over in the respective delivery note. After 15 days from the date of delivery of the product it isn't possible to claim liability for obvious defects. Other defects of the product must be reported in writing to the Seller immediately after their discovery, but prior to the end of the warranty period.

When the warranty period from the time the buyer had the opportunity to inspect the product expires, it isn't possible to claim liability for defects.

Complaints sent by the last day of the warranty period shall be deemed timely raised, whereas the date of mailing the registered letter to the postal license holder is decisive for meeting the deadline.

Complaints of the Purchaser regarding defects of the delivered product must be made in writing and accompanied by the following documents:

- A copy of the delivery note or CMR
- Copies of the relevant sales or other contract and invoice
- The identification of the product, its technical specifications
- Protocol describing specific identified defects and their scope with validity of an official inspection certificate
- Request of the Purchaser on how to resolve the complaint

In case of notification of the defects of the product (complaint) made by phone or e-mail or facsimile, a written notification of the defects of the product (complaint) by the Purchaser has to follow within 3 calendar days by a registered delivery letter of the **Romanian** mail service, **Posta Romana**.

The Seller is obliged to notify the Purchaser in writing within 15 working days from getting the complaint whether it accepts the complaint or not and the way of correcting it.

The claimed product or a part thereof have to be stored by the Purchaser separately until the conclusion of the complaint and any handling or use of the product which could make the verification of claimed defects of the delivered product harder or impossible is prohibited. The Purchaser is obliged to allow the Seller to verify the claimed defects of the product and to hand him over the claimed product or a part thereof upon request of the Seller whereas non-compliance with this obligation of the Purchaser shall mean termination of all claims of the Purchaser to the liability of the Seller for defects.

The Purchaser is not entitled to use or sell the claimed product without a written consent of the Seller until the complete conclusion of the complaint.

In case the Purchaser breaches the above listed principles of complaints or the complaint is not legitimate, the Seller reserves the right to refuse the complaint for defects of the product. In such case the Purchaser is obliged to pay the Seller all costs incurred on its activities in relation to the complaint handling.

In case the complaint is legitimate the Purchaser can ask for delivery of substitute product or a part thereof replacing the defective one or repair of the defects of the product or an adequate discount up to 15% of the purchase or other price. The Purchaser is not entitled to any other claims with regard to defects of the product.

In case of replacement of defective parts of the product or the entire product the replaced defective parts or the replaced product become property of the Seller.

The repair of the defects of the product will be done at the Purchaser's place at the place specified in the purchase or other contract or the Purchaser will send the defective part of the product or the entire product for repair. In case the product is at a different place than specified in the concluded contract all transport costs and other costs related to the repair of the product or a part thereof will be paid by the Purchaser to the Seller.

The Seller is obliged to disassemble the parts of the product and assemble them again if this work requires special expert knowledge or skills. In case such knowledge and skills are not necessary the Seller shall meet its obligations in the complaint proceedings by duly delivering the Purchaser the repaired or replaced part of the product or the entire product.

The parties agreed that in case a liability for damage arises to one part, this party is responsible to the other party only for the actual damage and not for the missed profits.

Besides the legal reasons the Seller is not responsible for a breach of its obligations if these were caused by delay or other breach of the obligations of its contractors.

The Seller is not responsible for direct or indirect loss incurred by the Purchaser or missed profits of the Purchaser arising from the use of the subject matter of the purchase (product) for a different purpose or in an environment requiring different qualities of the product than those specified in the purchase order of the Purchaser.

VI. Governing law and dispute resolution

The Parties agreed that all their disputes arising from business relations in connection with these Terms and Conditions, including disputes about their validity, interpretation or cancellation will be solved by the arbitration courts of the **Romanian** Chamber of Commerce and Industry in **Bucharest** according to its basic internal regulations. Parties shall submit to the decision of this Court. Its decision will be binding for the parties.

The Seller and the Purchaser agreed that all disputes of non-property nature will be solved by the County Court – **Bucharest** and pursuant to the legal regulations of **Romania**.

These Terms and Conditions are governed by the **law of Romania**. If the Purchaser

is a subject of foreign law, the Seller and Purchaser exclude the application of the UN Convention on Contracts for the International Sale of Goods by their mutual agreement.

VII. The effects of insolvency proceedings, execution order, liquidation and reduced ability to meet obligations

In the event that the insolvency proceedings is initiated against the Purchaser as a debtor within the meaning of the Insolvency Act in force in the country of residence or place of business of the Purchaser, or an execution is ordered against him within the meaning of the law in force in the country of residence or place of business of the Purchaser or the Purchaser is in liquidation according to the relevant law in force in the country of residence or place of business of the Purchaser, or the Purchaser's ability to meet the obligations of closed purchase or other contracts significantly reduced and the Seller does not exercise its right to withdraw from the concluded contract, the Seller is entitled to charge the Buyer a one-off contractual penalty amounting to 10% of the price of the ordered or delivered and unpaid or partially paid product according to the concluded purchase or other contract.

VIII. Final provisions

The Parties agree that, in case of doubt the relevant provisions of international rules for interpretation of delivery items (ICC) - INCOTERMS 2010 delivery terms DAP will apply to the legal interpretation of the Terms and Conditions and agreements concluded by the Parties and steps taken on their basis.

Force majeure shall mean extraordinary circumstances preventing performance of the obligations of the Seller from the purchase or other contract that occurred independently of the will of the Seller and could not have been prevented by the Seller or even the Buyer. If there are circumstances with the nature of force majeure preventing the performance of contractual obligations by the Seller or its subcontractors, Seller has the inalienable right to extend the delivery time of the delivery of the product or to withdraw from the purchase or other contract, in both cases without the obligation to compensate the other party.

The Purchaser cannot release itself from the due performance of its financial obligation even with reference to the force majeure.

None of the rights or obligations of the Purchaser from the purchase contract cannot be assigned or transferred to a third party without the prior written consent of Seller. This is without prejudice to the option of the Purchaser and the Seller to use third parties as the contracted carriers for transport of the product.

If the Purchaser refuses or obstructs delivery of a document from the Seller relevant instrument shall be considered delivered on the day of such refusal or obstruction of delivery.

The Purchaser grants the Seller its consent to the processing of personal or business data provided by Purchaser in accordance with the Act no. 122/2013 Zb., On Personal Data Protection and amending **certain laws in force in Romania**. This consent is given by the Purchaser until its written appeal. The provided data will be used by the Seller for the purpose of offering services and for marketing purposes.

These Terms and Conditions shall enter into force on the date of their issuance.

1 January 2019

Tivadar Szondi, General Manager