

TERMS & CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these Terms:

"Buyer" means the person whose order (written or oral) for the Goods is accepted by the Company;

"Company" means BOGE Compressors (Australia) Pty Ltd, ABN 67 145 286 148.

Registered office: Unit C, 9 Morgan Street, Rockingham WA 6168

"Contract" means the contract for the purchase and sale of the Goods;

"Goods" means the goods (including any instalment of the goods; any part of them; any parts; excess materials and/or services) which the Company is to supply in accordance with these Terms;

"Terms" means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Company;

"Writing" and any similar expression, includes facsimile transmission and comparable means of communication but not electronic mail.

1.2 Any reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

2. BASIS OF THE SALE

2.1 The Company shall sell and the Buyer shall purchase the Goods in accordance with any order of the Buyer which is accepted by the Company either by the Company dispatching its standard order acknowledgement or if no such acknowledgement is sent, by supplying the Goods, subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such order is made or purported to be made, by the Buyer. Each order is accepted by the

Company entirely at its discretion and shall constitute an individual contract between the Company and the Buyer.

- 2.2 No variation to these Terms shall be binding unless signed by a Director of the Company.
- 2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing and signed by a duly authorised representative of the Company. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

3. PRICE OF THE GOODS

- 3.1 The price of the Goods shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of delivery of the Goods. All prices quoted are valid for 60 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Company without giving notice to the Buyer.
- 3.2 The Company reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company in the costs of labour, materials or other costs of manufacture such as without limitation, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions. The giving of such notice shall bind both parties to the new price and shall not entitle either party to cancel the contract.
- 3.3 Except as otherwise stated in writing by a duly authorised representative of the Company all prices are given by the Company on an ex works basis, and where the Company agrees to supply any Goods otherwise than at the Company's premises, the Buyer shall be liable to pay the Company's charges for transport, packaging and insurance.
- 3.4 There shall be added to the price for the Goods any value added tax and any other tax or duty relating to the manufacture, transportation, sale or delivery of the Goods (whether initially charged on or payable at a later date by the Buyer to the Company).

3.5 Prices are quoted exclusive of trade or quantity discounts which will only apply to the Contract with prior written agreement of a duly authorised representative of the Company.

4. TERMS OF PAYMENT

4.1 If the Company has granted the Buyer credit terms, payment for the Goods shall fall due 30 days after the date of the invoice therefor.

4.2 In all other cases, unless expressly agreed otherwise with a duly authorised representative of the Company, payment for the Goods must be received by the Company before supply of the Goods.

4.3 Where the Goods are to be delivered in instalments, payment in full for all the Goods shall fall due before the delivery of the first instalment unless expressly agreed otherwise in writing with a duly authorised representative of the Company.

4.4 The Buyer shall not be entitled to set off or counterclaim any sums in reduction of sums due under the Contract.

5. DELIVERY

5.1 The Company will use its best endeavours to supply the Goods on the date or dates specified in the Contract, but any dates given for supply of the Goods are approximate only and are not guaranteed by the Company. The Company shall not be liable for any delay in delivery of the Goods however caused and any failure of the Company to supply the Goods by a specified date or dates shall not entitle the Buyer to repudiate or cancel the contract. Time for supply shall not be of the essence of the Contract. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

5.2 Where the Goods are to be supplied in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

5.3 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any

cause beyond the Company's reasonable control including by reason of war, invasion, hostilities (whether or not war has been declared) civil war or unrest rebellion, insurrection or military or usurped power, or by any acts of foreign governments, or by reason or statute, rules or requests issued by any government department or other duly constituted authority, or strikes, lock-outs, breakdown of plant, difficulties in obtaining raw materials, labour, fuel or parts of machinery, power failure, or breakdown in machinery beyond the Company's control. In the event of a supply of Goods being delayed for a period of six months or more from the said date or dates referred to in clause 5.1 by any of the reasons stated above, either party may terminate the Contract by notice in writing to the other.

5.4 Supply shall be deemed to take place either:

5.4.1 upon the physical handing over by the Company of the Goods to the Buyer or his designated carrier or agent;

5.4.2 upon consignment of the Goods by the Company to the Post Office at the request of the Buyer for delivery in the normal course of post;

5.4.3 upon the removal of the Goods from the Company's premises where the Company has, at the request of the Buyer, agreed to transport the Goods by its own transport or by carrier designated by the Company;

5.4.4 where no Goods, products or equipment form part of the Contract, upon the commencement of repair, maintenance, installation work and/or the provision of other services by the Company; or

5.4.5 upon despatch of the Goods to storage facilities either at the request of the Buyer or due to his failure or refusal to accept delivery.

5.5 If the Buyer fails to take delivery of the goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:

5.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) or storage;

5.5.2 storage and insurance of the Goods shall be at the Buyer's risk and expense;
or

5.5.3 if the Buyer fails to take delivery of the Goods within fourteen days of notification that they are ready for delivery the Company shall have the right to sell, dispose of or otherwise deal with the Goods and the Buyer shall be liable to the Company for all loss (including loss of profits) or damage which the Company shall suffer in consequence of the Buyer's failure to take supply of the Goods or of such sale.

5.6 Non-delivery of the Goods shall be notified to the Company within seven days of the date of delivery indicated by the Company.

5.7 The Company and (where relevant) the carriers must be notified within three days of delivery of any damage or shortage and the Buyer must retain for inspection any damaged Goods and packaging.

5.8 The Company shall incur no liability whatsoever in the event of failure by the Buyer to notify the Company within the time limit specified in clause 5.7 above of non-supply, damage or shortage as above.

6. RISK AND PROPERTY

6.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

6.1.1 in the case of Goods to be delivered at the Company's premises at the time when the Company notifies the Buyer that the Goods are available for collection; or

6.1.2 in the case of the Goods to be delivered otherwise than at the Company's premises, at the time of delivery as specified in clause 5.4 above or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.

6.2 Notwithstanding delivery and the passing or risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of:

6.2.1 the price of the Goods; and

- 6.2.2 the price of all other goods and services agreed to be sold or supplied by the Company to the Buyer for which payment is then due.
- 6.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company's property, but the Buyer may resell or use the Goods in the ordinary course of business at full market value and that any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.4 Until such time as the property in the Goods passes to the Buyer, (and provided that the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company. The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods or may be stored in order to inspect them, and/or to ensure that the Buyer is complying with its obligations in clause 6.3 or, where the Buyer's right to possession has terminated to recover them.
- 6.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the goods has not passed from the Company.
- 6.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Buyer does so all moneys owing by the Buyer to the Company shall (without limiting any other right or remedy of the Company) forthwith become due and payable.
- 6.7 In the event of certain Goods having been paid for by the Buyer and other Goods not having been so paid for the onus of proof shall be on the Buyer to show that any Goods remaining in its possession are Goods for which the Company has been paid.
- 6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

7. ACCEPTANCE

- 7.1 If the Buyer accepts any of the Goods supplied, the Buyer shall be deemed to have accepted them all, and shall not be entitled to reject any other Goods which constitute part of that same supply.
- 7.2 If the Goods are supplied at the same time as Goods of a different description, the Buyer shall be entitled to accept the Goods of one description and reject Goods of a different description, but not to reject the entire consignment.
- 7.3 The Buyer undertakes to examine the Goods immediately upon receipt, and if the Buyer does not notify any defect to the Company within seven days of supply, the Buyer shall be deemed to have accepted them.
- 7.4 Supply of the Goods by the Buyer to a third party constitutes acceptance of them by the Buyer.
- 7.5 The Buyer shall be deemed to have accepted the Goods if the Buyer seeks or agrees to have any defects in the Goods repaired.

8. WARRANTIES AND LIABILITY

- 8.1 Subject to the following provisions, the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in materials and workmanship at the time of delivery and that any services will be provided using reasonable care and skill.
- 8.2 The above warranty is given by the Company subject to the following conditions:
 - 8.2.1 the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
 - 8.2.2 the Company shall be under no liability in respect of any defect in the Goods which is not notified to the Company within two months of the delivery of the Goods to the Buyer, or which is so slight that it would be unreasonable for the Buyer to reject or claim damage in respect of that defect;
 - 8.2.3 The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions, misuse or alteration or repair of

the Goods without the Company's approval and the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defects or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract;

8.2.4 the Company shall be under no liability if the total price for the Goods has not been paid by the due date for payment;

8.2.5 the above warranty given by the Company to the Buyer does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company;

8.2.6 the Company shall be under no liability in respect of the fitness of the Goods for their purpose unless that purpose is one for which the Company commonly supplies the Goods or is specified in the Contract; and

8.3 Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality of condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Terms, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Buyer.

8.5 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express term of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.

9. DESIGN AND SPECIFICATION

- 9.1 Drawings, weights, dimensions, specifications and other descriptive information supplied by the Buyer, whether written or verbal, are warranted by the Buyer to be in all respects accurate, complete and suitable for the Buyer's requirements.
- 9.2 Drawings, weights, dimensions, shipping specifications and other descriptive matters produced by the Company are approximate and are not intended to be binding upon the Company, unless specified otherwise in the contract.
- 9.3 The Company reserves the right to alter the specification of any Goods without prior reference to the Buyer, PROVIDED THAT the Goods comply substantially in all other known respects with the Buyer's requirements.

10. TESTS AND PERFORMANCE

- 10.1 If the Buyer has agreed with the Company that the Goods shall be tested, the Buyer shall be liable to pay the Company the costs of those tests.
- 10.2 If the Buyer has requested that it be present and/or represented as such tests, the Company shall give the Buyer seven days' notice of the time and place of the tests. Should the Buyer fail to attend, the tests will proceed in the absence of the Buyer and shall be deemed to have been performed in the Buyer's presence.
- 10.3 If the Goods fail to fulfil any estimated performance figures agreed between the Company and the Buyer, the Buyer shall permit the Company reasonable time to work upon the Goods in order to improve the performance figures to a satisfactory level.

11. SAMPLES AND RETURNS

- 11.1 Any samples supplied by the Company to the Buyer must be returned carriage paid, in substantially the same condition as they had been when supplied, within one calendar month of supply, or the Buyer will be liable to pay the Company the full price of those samples.
- 11.2 Return of any Goods sent in accordance with the Buyer's order cannot be accepted unless the Company has agreed in writing to accept their return. It is a requirement that the Goods be insured and carefully packed by the Buyer.

12. BUYER'S MATERIALS AND PROPERTY

- 12.1 The Company undertakes work in accordance with the Buyer's own materials or property on the express understanding that, unless otherwise agreed in writing by a duly authorised representative of the Company, while the Company will endeavour to avoid such, it shall not be liable for any damage to such materials, property and plaster work, brickwork, buildings etc caused by the work howsoever arising.
- 12.2 The Buyer is responsible for insuring its materials or property against all risks while in the possession, power or control of the Company and the Company shall not be liable for loss or damage to such during such time.

13. INTELLECTUAL PROPERTY

The Buyer shall indemnify the Company against all actions costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement of any copyright, design right, trade mark, patent or any other industrial or intellectual property rights resulting from compliance by the Company with the Buyer's instructions, whether express or implied.

14. DEFAULT OR INSOLVENCY OF BUYER

- 14.1 This clause 14 applies if:
- 14.1.1 the Buyer fails to make any payment on the due date; or
 - 14.1.2 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or a resolution is passed or a petition presented for the winding up of the Buyer; or
 - 14.1.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - 14.1.4 the Buyer ceases, or threatens to cease, to carry on business; or
 - 14.1.5 the Buyer encumbers or in any way charges any of the Goods; or

- 14.1.6 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 14.2 If this clause 14 applies then, without limiting any other right or remedy available to the Company, the Company may:
- 14.2.1 cancel the Contract or suspend any further deliveries under the Contract;
 - 14.2.2 and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary;
 - 14.2.3 withdraw any credit facility or right to discount from the Buyer;
 - 14.2.4 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer);
 - 14.2.5 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 6 per cent per annum above ANZ bank base rate from time to time, until payment in full is made. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
 - 14.2.6 sell to third parties Goods ordered but not delivered under this or any other contract between the Company and the Buyer; and
 - 14.2.7 the Buyer's right to possession of the Goods shall terminate immediately and the Company shall be entitled to enforce the provisions of clause 6 and in particular clause 6.4.
- 14.3 In the event of an order being cancel by the Company in the above circumstances specified in clause 14.1 or being cancelled by the Buyer the Buyer shall indemnify the Company against all its costs (including loss of profits, labour, materials and overheads) and all expenses and damages incurred by the Company in connection with the order and its cancellation (the Company giving credit for the value of the materials sold or utilised for other purposes).

15. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by prepaid special delivery post or by the recorded delivery service or transmitted by teletext or other means of telecommunication resulting in the receipt of a written communication in permanent form and, if so sent or transmitted to the address of the party shown in the face hereof, or to such other address as the party may by notice to the other have substituted therefore, shall be deemed effectively given on the day where in the ordinary course of the means of transmission it would be first received by the addressee in normal business hours.

16. GENERAL

- 16.1 The invalidity, illegality or unenforceability for any reason of any part of these terms and conditions shall not prejudice or affect the validity, legality or enforceability of the remainder.
- 16.2 No failure on the part of either party to the Contract to exercise any rights under the Contract at any time shall constitute a waiver of the Contract nor shall any single or partial exercise of any right under the contract preclude any other or further exercise of any other right. The election by either party of a particular remedy in the event of default by the other party shall not be exclusive of any other remedy and all rights and remedies of the parties hereto shall be cumulative and not exhaustive of any other rights or remedies provided by the law.
- 16.3 The Buyer shall not without the prior written consent of the Company assign transfer or sub-let the benefit or the burden of the Contract or any part of the Contract.
- 16.4 The Company may assign transfer of sub-contract the Contract or any part of the Contract to any other person or company.
- 16.5 No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.6 If any provision of these Terms is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

- 16.7 Any dispute arising under or in connection with the Contract or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Institute of Mechanical Engineers and in accordance with the Arbitration Act 1996.
- 16.8 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 16.9 The Contract shall be governed by the laws of Australia and New Zealand, and the Buyer agrees to submit to the non-exclusive jurisdiction of the Australian And New Zealand courts.