

**General Terms and Conditions**  
of  
HOERBIGER Compression Technology,  
Region Europe, Middle East, Africa  
for  
**Product Deliveries and Services**

**Version valid as of April 1, 2010**

**1. GENERAL**

These General Terms and Conditions form an integral part of the Agreement entered into with the Principal. These General Terms and Conditions, as amended or supplemented from time to time, shall also apply to any subsequent services regardless of any agreement or explicit provision with respect to their applicability to such subsequent services. References by the Principal to terms and conditions of the Principal shall be deemed not made. Such references shall not have any effect on the applicability of these General Terms and Conditions. Diverging provisions shall only be applicable if agreed between the Principal and the Contractor in writing.

**2. DEFINITIONS**

Contractor	HOERBIGER KOMPRESSORTECHNIK EUROPA HOLDING GmbH or it's subsidiaries or any other company of the HOERBIGER – Group designated in the Agreement as contracting party.
Principal	The company designated in the Agreement for whom the Contractor provides product deliveries and/or services.
Agreement	Agreement on which the deliveries/services of the Contractor are based. The Agreement defines and regulates the deliveries/services and obligations of both parties. In the case of contradiction between the Agreement and these General Terms and Conditions, the Agreement shall prevail.
Product	The object(s) to be supplied under these General Terms and Conditions.
Place of Manufacture	The Place where the final assembly is made before the Product is delivered to the Principal.
Acceptance Tests	Tests which are carried out before delivery in order to ensure that the Product is in compliance with the Agreement.
Equipment	Such plant, machinery or parts of plant or machinery on which or with respect to which the Contractor shall perform the Services.
Location	Such place on which the Equipment of the Principal, as stated in the Agreement, is located and where the services by the Contractor shall be performed.

**PROVISIONS FOR PRODUCT DELIVERIES**

**3. PRODUCT INFORMATION**

All information and data contained in general product documentation and price lists, whether in electronic or any other form, are binding only to the extent, that they are by reference expressly included in the Agreement.

**4. DRAWINGS AND DESCRIPTIONS**

- All drawings and technical documents relating to the Product or manufacture submitted by the Contractor to the Principal, prior or subsequent to the formation of the Agreement, shall remain the property of the Contractor. Drawings, technical documents or other technical information received by the Contractor shall not, without the consent of the Contractor, be used for any other purpose than that for which they were provided. They may not, without the consent of the Contractor, otherwise be used or copied, reproduced, transmitted or communicated to a third party.
- In support of installation, operation and maintenance of the Product, the Contractor shall provide the Principal with free of charge information and drawings.
- Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. The Contractor shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

**5. ACCEPTANCE TESTS**

- Acceptance tests will be carried out only if explicitly agreed in the Agreement.
- Acceptance tests provided for in the Agreement shall, unless otherwise agreed, be carried out in conformity with the norms of the contractor, at the place of manufacture during normal working hours. If the Agreement provides for the quality specifications of the Principal to be applicable, the acceptance test shall be done in conformity with the regulations set forth in the Agreement; or where applicable or agreed, in conformity with the norms of qualified suppliers, and in the absence of such norms, in accordance with applicable international norms which reflect the recognized international state of the art technology.
- The Contractor shall notify the Principal in writing of the acceptance tests in sufficient time to permit the Principal to be present or to arrange for a representative. If the Principal is not present or represented, the test report, also documented

evidence of conformity for the Contractor, shall be sent to the Principal.

- If the acceptance tests show the product not to be in accordance with the Agreement, the Contractor shall without delay remedy any deficiencies in order to ensure that the product complies with the Agreement. New tests shall then be carried out at Principal's request, unless the deficiency was insignificant.
- Unless otherwise agreed in the Agreement, the Principal shall bear all costs for acceptance tests carried out at the place of manufacture. The Principal shall also bear all travelling and living expenses for him or his representative.

**6. DELIVERY, PASSING OF RISK**

- Any agreed trade term shall be construed in accordance with the INCOTERMS 2000. If no trade term is specifically agreed, the delivery shall be Ex works (EXW). Transport insurance coverage shall only be provided by the Contractor upon explicit request by the Principal and at his cost. The choice of the means and route of transport shall be made by the Contractor according to his best judgment.
- Partial shipments shall be permitted unless otherwise agreed.

**PROVISIONS FOR SERVICES**

**7. SCOPE OF MAINTENANCE**

- Preventive Maintenance (according to DIN 31051) shall be carried out at the times or with the intervals specified in the Agreement. Unless otherwise agreed the preventive Maintenance shall include:
  - Checking the condition of the Equipment,
  - Functional check,
  - Adjustments,
  - Provisions and replacement of wearing parts
  - Cleaning and necessary lubrication
- Corrective Maintenance shall be undertaken in order to remedy any functional defects which have arisen in the Equipment. It shall be commenced with all speed or within the time specified in the Agreement. Unless otherwise agreed the corrective Maintenance shall include:
  - Fault tracing,
  - Remedying of the defect,
  - Provision and replacement of spare parts,
  - Functional check

3. If corrective Maintenance is carried out shortly before preventive Maintenance is due, the Contractor may, with the Principal's consent, thereby also carry out the preventive Maintenance. For such co-ordinated maintenance the Contractor may not charge the Principal for any costs which are already covered by the agreed fee for preventive Maintenance. If the times for preventive Maintenance are specified in the Agreement, they shall not otherwise be changed as a result of this deviation.
4. Unless otherwise agreed, the Maintenance shall be carried out during the Contractor's normal working hours.

#### **8. CUSTOMER'S DAILY CARE, LOG**

The Principal shall be responsible for the necessary daily care of the Equipment. He shall further keep a log of the operation and care of the Equipment.

#### **9. CONTRACTOR'S EXCLUSIVE RIGHT**

The Principal shall not, except as specified in Clause 12, without the Contractor's consent, himself carry out or have others carry out the maintenance which under the Agreement shall be carried out by the Contractor. If the Principal does so, the Contractor's responsibility for previously performance Maintenance shall cease.

#### **10. ALTERATIONS TO THE EQUIPMENT**

1. The Principal is required to immediately notify the Contractor of any changes in the Location of the Equipment, any changes of the required intervention or required time, to the extent such circumstances are relevant to the performance of the Agreement. Any agreed fees affected by these changes shall be re-determined by the Contractor in accordance with the effected changes.
2. The Principal shall without undue delay inform the Contractor by notice in writing of any alterations concerning the Equipment or it's operation or other measures taken by the Principal which may affect the Contractor's obligations under the Agreement. If such alterations or measures seriously affect the Contractor's obligations, and if the parties fail to agree on how to amend the Agreement in respect thereof, the Contractor may, with immediate effect, terminate the Agreement by notice in writing to the Principal. The Contractor shall in case of such termination also be entitled to compensation.

#### **11. HEALTH AND SAFETY**

1. The Principal shall ensure that the Maintenance is not carried out under dangerous or unhealthy conditions, and shall take all necessary measures to protect the Contractor's personnel from exposure to any safety or health hazard. Moreover he shall ensure that the Contractor's personnel are informed of any safety regulations in force at the place where the Maintenance is carried out.
2. The Contractor is entitled but not required to communicate to the Principal suggestions with respect to the security of the Equipment and the operation thereof.
3. The Contractor is entitled to interrupt the performance of the Agreement if he is of the opinion that the security conditions at the Location required for the performance of the Agreement are not sufficiently provided and/or guaranteed by the Principal and the Contractor shall in such case be entitled to withdraw his personnel affected thereby or his entire personnel from the Location. The Principal shall be liable for all resulting detriments and disadvantages and indemnify the Contractor accordingly.

#### **JOINT PROVISIONS**

#### **12. DELAYS FOR WHICH THE CONTRACTOR SHALL NOT BE HELD LIABLE**

1. The Contractor shall not be liable for delayed performance or partial or total non-fulfilment of the Agreement to the extent such delay or partial or total non-fulfilment is due to reasons which shall not be ascribed to the Contractor, such as, in particular:
  - Force majeure (see Section 19);
  - Actions or omissions of the Principal, for which the Principal is liable and which have a significantly effect on the performance of the services by the Contractor..

2. The Contractor shall notify the Principal within appropriate time periods of any circumstances which will lead to a delay/interruption/non-performance of the services. The Contractor shall notify the Principal of the estimated consequences on the time schedule and deadlines.
3. If the afore mentioned delays are not exclusively ascribed to the Contractor, the Contractor shall be entitled to an adequate adjustment of prices. Any further additional costs shall be borne by the Principal.
4. The Contractor shall be entitled to rescind the Agreement if services to be provided or performed by the Principal have not been provided or performed within an adequate remedial period.
5. In the event that any delays of the performance of the Agreement for which the Contractor is not liable shall not be remedied within 120 days - and in particular delays for which the Principal is not liable either - each of the parties shall be entitled to rescind the Agreement, provided that the Principal shall only be entitled to rescind the Agreement if he is not to be held liable for the delay. In such case, any services already provided by the Contractor shall be remunerated and all expenses incurred shall be reimbursed to the Contractor by the Principal.
6. Except as specified in this Section the Principal shall not be entitled to any compensation for the Contractor's delay.

#### **13. PAYMENT, DELAY OF PAYMENT**

1. Unless otherwise agreed, all fees and prices are in Euro. The offers, prices and fees of the Contractor are without engagement, unless otherwise expressly agreed in writing.
2. Payment shall be made against invoice no later than 30 days after invoice date. Whatever means of payment used, payment shall not be deemed to have been effected before the Contractor's account has been fully irrevocably credited.
3. Upon a payment default by the Principal in the form of non-payment, incomplete payment or late payment, the Contractor shall be entitled to interrupt the performance of the services. Any applicable time periods for the provision of the services by the Contractor shall be extended by the duration of the interruption as well as by an appropriate time period for the preparation of the continuation of the services. Any additional costs arising in connection with such interruption shall be borne by the Principal.
4. Furthermore the Contractor is entitled to interest for default from the due date. Unless otherwise agreed, the rate of interest shall be 10 percentage points above the on due date defined base rate, which is set aside by the European Central Bank.
5. If the default is not remedied by the Principal within the period set by the Contractor, the Contractor shall be entitled to rescind the Agreement. The Contractor shall in this case be due the entire consideration as well as compensation for the loss incurred less any non-incurred expenses.
6. In each of the above cases, the Principal shall be liable for any damages incurred by the Contractor as a result of the payment default.

#### **14. WARRANTY**

1. The Contractor warrants that the delivered parts are free of any material defects or processing defects and that the services to be performed pursuant to the Agreement shall be performed by specialised personnel in accordance with the Agreement.
2. Any defects on parts or services should be notified to the Contractor in writing immediately following their discovery, otherwise the warranty claim shall be lost. The Contractor is entitled to request to have the part in question sent to him by the Principal. A non compliance of the Principal to this demand releases the Contractor from the performance of the warranty.
3. The Principal shall at his own expense arrange for any dismantling and reassembly of Equipment other than the product, to the extent that this is necessary to remedy the defect.
4. Property in the defective parts which have been replaced shall be transferred to the Contractor.
5. The warranty period for the services rendered or the parts used while executing the Agreement amounts to 12 months, if the operating is in accordance with the specifications, the operating manual and other information and/or documents provided by the Contractor in compliance with the Agreement. The warranty period for assertion of hidden faults, independent of the time

they occurred, ends 12 months from the completion of the first delivery/service. In case of hidden faults the warranty claims are limited to claims for improvement.

6. The warranty claim with respect to used parts shall be limited to the repair (improvement) or replacement (exchange) by the Contractor. Any further warranty claims shall be excluded. Any additional costs incurred with respect to parts delivered, repaired or replaced in connection with the warranty, including travel expenses, shall be borne by the Principal.
7. The Principal shall only be entitled to a price reduction if an improvement by repair or replacement is not possible or advisable for technical or economical reasons **and the Contractor states that he will refrain from carrying out any improvement.**
8. Any warranty or guarantee shall be excluded for the delivery of used materials or parts subject to wear and tear.
9. Warranty claims shall be performed and completed within an appropriate time period.
10. If the Principal has contested the Contractor any defect and no defect is found for which the Contractor is liable, the Principal has to compensate the Contractor for the costs incurred from processing the objection.
11. For defects and damage attributed to usage in accordance with specification (e.g. wear parts), or which are the result of defective maintenance or faulty installation, changes or other actions by the Principal or authorized third parties, incorrect storage, insufficient security, use of inadequate operational materials or other similar circumstances, like deviant operating conditions, no warranty or guarantee shall be provided.
12. The Contractor is not liable for defects arising out of materials provided or a design stipulated or specified by the Principal.
13. The Principal shall at his own cost ensure that the services of the Contractor (improvement) may be performed and that the required Equipment is accessible.
14. The Principal shall not have any additional rights or claims and any such rights and claims are hereby expressly excluded, in particular with respect to damage claims for non-fulfilment or faulty performance by the Contractor, except in the case of gross negligence or wrongful intent of the Contractor. In such case, the claim for damages shall however be limited to direct damages and any indirect damages and consequential damages shall be excluded. The amount of claim for damages shall be capped at half of the contractual consideration (including in the case of multiple damage events).

#### 15. UNLAWFULNESS OF SET-OFF

Any set-off of liabilities of the Principal against accounts receivable of the Contractor resulting from the Agreement or other agreements as well as the withholding of services by the Principal in connection with counter-claims against the Contractor shall be prohibited.

#### 16. RETENTION OF TITLE

Any goods delivered by the Contractor shall remain in the Contractor's property until all liabilities resulting from the business relationship between the Principal and the Contractor have been settled by the Principal. Irrespective Article 6 and the stipulations in the Agreement regarding passing of risk this provision shall apply.

#### 17. INSURANCE

The Contractor has entered into a factory insurance and product liability insurance covering the usual risks and undertakes to maintain this insurance coverage throughout the performance of the Agreement. In excess thereof, the Contractor shall only enter into or maintain any further insurance as agreed in the Agreement.

#### 18. LIMITATION OF LIABILITY

Notwithstanding the provisions of Section 14, the following shall apply:

1. The liability of the Contractor shall be limited to the services agreed in the Agreement. Services outside of the Agreement provided in connection with the performance of the Agreement shall not give rise to any liability of the Contractor.
2. The exclusion of consequential damages in Section 14, includes in particular, but without limitation, the exclusion of liability for lost profit or revenue, production stop, restriction of the use of the Equipment or parts of the Equipment or other installations of

the Principal, costs of eventual replacements or other substitutions, costs of energy supply etc., including interest for late payment. In particular, the exclusion of liability includes any damage claims related to defects of the Equipment, which were not readily discoverable and which arise or show effects in connection with the provision of services by the Contractor.

3. The Contractor shall not be liable for parts or services provided by the Principal. The Contractor shall not be required to examine such parts or services.
4. The Contractor shall not be liable for the personnel provided by the Principal, notwithstanding the use of the Principal's personnel together with the Contractor's personnel.

#### 19. FORCE MAJEURE

1. Either Party shall be entitled to suspend performance of its obligations under this Agreement, if impeded by force majeure. The same applies to unforeseeable events which value for force majeure but for which the Party is not to be held liable but which impedes or excessively hampers the fulfilment of the contractual obligations. Such circumstances are especially interruption of operations, strike, official order, war, military mobilization, requisition, riots and insurrection, the cessation of import or export possibilities especially embargo, natural disaster, fire, restrictions in the use of power as well as defects or delays in deliveries or work by sub-contractors caused by any such circumstances referred to in this Section.
2. A circumstance referred to in this Section, occurring after the formation of the Agreement, shall give a right to suspension only if this effect on the performance of the Agreement could not be foreseen at the time of conclusion of the Agreement.
3. Regardless of what might otherwise result from these General Terms and Conditions, either party shall be entitled to terminate the Agreement by notice in writing to the other party, if performance of the Agreement is suspended for reasons mentioned under this Section for more than 120 days.

#### 20. INDUSTRIAL PROPERTY RIGHTS

1. The Contractor warrants that the services provided and deliveries made by the Contractor shall not interfere with the rights of third parties.
2. In the event of any claims by a third party against the Principal as a result of a breach of 20.1, the Contractor shall defend such claims at his own costs provided the Contractor immediately informs the Principal of such claims and provided further that the Principal provides the Contractor with the required powers of attorney and certificates authorizing the Contractor to defend such claims on behalf of the Principal.

#### 21. CONFIDENTIAL INFORMATION

1. Confidential Information provided by the Contractor and the Principal to each other shall be clearly labelled, stamped, provided with a sign or otherwise evidenced in writing as confidential.
2. In addition to the provisions of 21.1, the Contractor and the Principal agree to treat all information received directly or indirectly from the other party as confidential and to only use such information in connection with the performance of the Agreement. The parties agree not to disclose or provide access to such information to third parties in any form. For the purposes of these General Terms and Conditions, third parties shall be deemed to include any person or entity other than corporate affiliates of the Principal or Contractor.
3. Confidential Information pursuant to 21.2 shall include in particular:
  - know-how and results of internal processes, organisations etc. of the Principal or Contractor achieved or used in connection with the performance of the Agreement,
  - description of the performance of the Agreement,
  - timetables, goals and ideas for the performance of the Agreement.
  - any other not publicly available information which is obtained by either party on the other party in connection with the performance of the Agreement.
4. The provisions regarding the Confidential Information shall apply to all employees and agents of the parties regardless of the type

and legal form of employment or cooperation. The parties agree to ensure that these persons shall be subject to appropriate confidentiality provisions to the extent not already the case.

5. The confidentiality provisions shall not apply to the extent that it can be proven that the relevant information is publicly known or has become publicly known without the fault of the party subject to the confidentiality provisions or has been or will be legally obtained by a third party is already in existence at and available to the receiving party.

**22. WRITTEN FORM**

Contractual communications, in particular regarding the performance of contractual services and/or notification of defects, damage claims, and notifications in accordance with contractual or legal requirements shall be made in writing.

**23. APPLICABLE LAW**

Except to the extent otherwise agreed in the Agreement, the contractual relationship between the parties shall be exclusively governed by the jurisdiction of the state in which the Contractor's office is located, except for reference norms of this right and the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

**24. ARBITRAL JURISDICTION**

1. All disputes arising in connection with the Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.
2. The arbitral court has to sit at the Contractor's place of business, negotiation language is the official language of the Contractor's place of business.

**25. COURT OF JURISDICTION**

Unless the Agreement excludes the appliance to the rules of arbitration, or for whatever reasons Section 24 cannot be applied to, the exclusive jurisdictional venue shall be the court competent as to the subject matter located at Contractor's business.