

**GENERAL TERMS AND CONDITIONS OF SALE OF GOODS AND OF ERECTION AND COMMISSIONING OF GOODS****1. DEFINITION OF TERMS**

These General Terms and Conditions (hereinafter referred to as GTC) are the sole conditions pertinent to sale of Goods to the Buyer and, if applicable, erection and commissioning of Goods by BAUER KOMPRESSOREN India Pvt. Ltd. (hereinafter referred to as BKL). The word "Buyer" shall mean a person / firm / proprietorship / company / trust / or any other establishment who places Order for purchase of Goods from BKL. The term "Goods" shall mean the equipment or plant and machinery or part thereof which is the subject matter of sale. The transaction of sale is on a principal to principal basis. The term "Quotation" shall mean the proposal / offer for sale of Goods made by BKL to the Buyer at the terms and conditions defined therein. The term "Order" shall mean Purchase Order issued by the Buyer to BKL for sale of Goods. The term "Contract" shall mean and comprise (in the order of precedence) of Quotation, GTC and Order. The terms "Services" shall mean services for erection and commissioning of Goods as more particularly mentioned in "Additional Terms and Conditions for Erection Commissioning of Goods".

Notwithstanding anything contained herein, stipulations differing from these GTC, in particular, any of the Buyer's terms and conditions which contradict these GTC, shall only be deemed to be agreed if they are specifically confirmed in writing by BKL as being applicable in place of these terms and conditions (whether completely or in part).

**2. VALIDITY OF QUOTATION**

BKL's offer is valid for a period of 30 (thirty) days only from the date to the Quotation, unless otherwise specified.

**3. VALIDITY OF CONTRACT**

The Contract shall not be binding on BKL unless a written order confirmation is issued by an employee authorised by BKL.

**4. PRICE**

The price quoted is based on these terms and conditions for sale of Goods / rendering of Services as enumerated in the Quotation. BKL reserves the right to revise the price consequent upon any modifications in these terms and conditions of supply of Goods/rendering of Services. Prices prevailing at the time of delivery will be applicable. BKL has the right to modify/withdraw any part of its offer after submitting it, unless it has been specifically agreed to the contrary by BKL. The Price is ex-works, unpacked and exclusive of packing & forwarding charges, freight, sales tax, excise duty, octroi duty and/or other levies or charges, if any, unless specifically stated otherwise in the Quotation. All such freight, taxes, duties, levies and charges, as applicable, shall be billed at rates in force at the time of delivery and shall be paid by the Buyer before delivery of the Goods is made.

**5. PAYMENT****A) Advance**

The advance received from the Buyer against the Order for the delivery of Goods and / or rendering of Service, shall be in the nature of an interest free advance for the due fulfilment of all the obligations of the Buyer under the Contract. In case the Buyer fails to fulfil any of its obligations in the Contract, including failure to make payment in time or failure to take delivery when called upon to do so by BKL or failure to provide the necessary infra-structural facilities for the commencement of the Services by BKL, BKL shall, at its absolute discretion, be entitled to dispose of the Goods at the best-available price obtainable without any prior notice to the Buyer and any shortfall that BKL may incur shall be met out of the said advance amount without prejudice to the rights of BKL and forfeit the advance towards any expenses incurred by BKL in connection with the Order or recover further sums by way of interest or any special damages.

**B) Terms of Payment**

- i) For Supply / Delivery
  - (a) 50% advance with the Order.
  - (b) Balance amount along with the applicable taxes, duties, levies and other charges against proforma invoice before dispatch. Buyer shall furnish appropriate forms / documents in support of any concessional taxes, duties claimed before dispatch of the Goods.
- ii) For rendering of Services
  - (a) 50% advance with the Order.
  - (b) Balance against fortnightly progressive bills, payable within seven days from the bill date.

**C) Mode of Payment**

All the payments due from the Buyer to BKL shall be made through an irrevocable and confirmed letter of credit from an internationally reputed bank in favour of "BAUER KOMPRESSOREN India Pvt. Ltd.". All the payments made by the Buyer shall be deemed to have been received by BKL only on realization of the amount.

**D) Overdue Interest**

If the Buyer makes any default in payment of the price mentioned in the Contract on the respective due dates, the Buyer shall pay to BKL interest on such price at the rate of 2% per month or part thereof with quarterly rests. The payment of such interest shall be in addition and without prejudice to the right of BKL to dispose of the Goods as per clause 5A) above, receive any other charges or special damages from the Buyer and/or to retain deliveries of remaining Goods / Services against current and / or other orders of the Buyer. The Buyer shall make any / all payments within 7 days of claim or submission of invoice by BKL, failing which, BKL shall have the right to divert the ordered Goods or stop performing Services.

**E) Payment Essence of Contract**

All stipulations as to time of payment of the purchase price of Goods and / or charges for rendering of Services for the Goods are the essence of the Contract.

**6. DELIVERY**

- A) Unless otherwise specified, all deliveries will be ex-BKL's works at Pimpri, Pune, Maharashtra
- B) Unless otherwise agreed, delivery period shall commence from the latest of the following dates:
  - i) The date of receipt of the formal Order with all clear technical and commercial details and clarifications, if any, required by BKL;
  - ii) The date of realisation of the advance payment;
  - iii) The date of establishment of acceptable letter of credit;
  - iv) The date of receipt of approved drawings and specifications, duly signed;
  - v) The date of receipt of necessary Import licence, if applicable;
  - vi) The date of receipt of signed agreement, if any;
  - vii) The date of receipt of concessional excise / tax certificate, if any.
- C) The dates stipulated for delivery or shipment of Goods either of the whole order or of any part thereof are only approximate. BKL shall make its best endeavour to adhere to the delivery schedule but distinctly declines any responsibility in respect of any loss or damage, directly or indirectly, occasioned by any means through delayed delivery or non-delivery. In no case shall delay or non-delivery of the whole or part of the order be a valid ground for the Buyer to reject or withhold payment for the Goods/Services. In all Orders, agreements, correspondence and other documents relating thereto, the words "month" or "months" and "week" or "weeks" shall mean the English calendar month or months and week or weeks respectively.
- D) If the Buyer fails to take delivery of the Goods within fifteen days of intimation of readiness of

Goods, BKL, at its absolute discretion, shall have the following cumulative rights:

- i) divert the ordered Goods and / or resort to the remedy specified in clause 5 A) above
  - ii) intimate to the Buyer a fresh delivery period and revised price for the Goods
  - iii) charge the Buyer for storage, insurance and handling charges @2% of the value of the Goods per month or part thereof commencing from the date of intimation of readiness of Goods
  - iv) Repudiate the Contract
- BKL's decision will be final and binding on the Buyer and no compensation and / or damages can be claimed by the Buyer.

- E) In all cases where the erection and commissioning of the Goods by BKL depends upon the provision by the Buyer of the necessary infra-structural facilities for such erection and commissioning, (i) any delay on the part of the Buyer to so provide the facilities within the stipulated time or (ii) the providing infrastructure facilities which are not in accordance with BKL's requirement, then, BKL shall be entitled at its option to repudiate the Contract and / or claim special damages from the Buyer.
- F) Unless otherwise expressly agreed to by BKL, the Goods against the order may be delivered either in one lot or in separate lots as may be convenient to BKL. Under no circumstances shall shipment or delivery of a part of the Goods against the Order be a valid reason for not taking delivery of or not making payment for Goods offered for delivery against the Order.
- G) The Buyer is obliged to examine the Goods upon receipt and inform BKL in writing within 5 (five) working days of delivery on all discernible defects and incorrect quantities, failing which, the Goods shall be deemed to have been received and accepted by Buyer in good condition and in quantity mentioned in the delivery note. Claims by the Buyer at a later date will not be valid.
- H) Any delay in delivery of the Goods and/or in the erection or commissioning of the Goods shall not entitle the Buyer to repudiate the Contract or claim any damages or interest or other charges in respect thereof.
- I) The delivery of Goods and the entire execution of the Order are subject to the provision that export licenses have been granted and that there are no other impediments arising from DE, EC, US or other export regulations for the necessary import of raw materials, sub-assemblies & components for the Buyer's desired end use.
- J) BKL shall not be held responsible for delays in delivery of Goods and / or rendering of Services, occasioned by the Buyer not fulfilling its obligations under the Contract.
- K) Where delivery of Goods is made ex-works, BKL may at Buyer's request (well in advance) and expense, arrange packing and transportation of Goods to the destination indicated by Buyer on "freight to pay" basis". BKL shall not in such an event, be responsible for the safe arrival of Goods at destination nor be held liable for any breach or non-performance of Contract by the carrier.

**7. RIGHT OF RESALE**

Irrespective of the fact whether the Goods have been appropriated to the Contract or not, BKL hereby expressly reserves its right of reselling the Goods in case the Buyer makes default in payment on the respective due dates and/or thereafter to take delivery of the Goods.

**8. PASSING OF RISK AND PROPERTY**

The risk in the goods shall pass from BKL to the Buyer the moment they are delivered by BKL to the Buyer or to a carrier or other bailee (whether named by the Buyer or not).

**9. BANK COMMISSIONS/GUARANTEES CHARGES**

All bank commissions and charges for bank and/or insurance guarantees concerning the Order against BKL's Quotation will be to the Buyer's account.

**10. ERECTION AND COMMISSIONING**

In case of applicability of rendering of Services of erection and commissioning, please refer to separate additional terms overleaf.

**11. VARIATION IN RATE OF CUSTOMS DUTY**

Wherever, the price includes landed cost (CIF cost in Rupees plus current rate of customs duty and clearing charges in Rupees) of imported components, any increase in selling price due to an upward revision in the rate of customs duty shall be to the Buyer's account.

**12. VARIATION IN RATE OF EXCHANGE**

Quotation is based on the present rate of exchange between the Indian Rupee and the currency of the country from which the goods/parts/components are to be imported. Any loss suffered by BKL as a result of fluctuation in rate of exchange at the time of remittance will be to the account of the Buyer.

**13. SPECIFICATIONS**

- A) The information as regards specifications of Goods given in the Quotation or in any of BKL's publications, drawing, literature etc. is only intended to present a general idea of the Goods offered for sale. They are not binding on BKL in all minute details. The specifications are subject to modifications without notice.
- B) Performance parameters are subject to tolerances e.g.  $\pm 5\%$  for flow rate, power, pressure, rpm and  $\pm 10\%$  for net weight and dimensions.
- C) BKL also reserves the right to make changes in the design of components or material which in BKL's judgement are necessary or which are necessitated by the non-availability of raw materials/components etc.

**14. PART ORDER**

BKL reserves the right to accept or decline a part Order. It also reserves the right to revise the prices of Goods offered, in case the Buyer decides not to place the complete order on BKL.

**15. INSURANCE AND RISK IN TRANSIT**

Unless otherwise stated in the Contract, insurance of the Goods will be effected by the Buyer. However, BKL may at the Buyer's request, expense and risk, arrange for the insurance of the Goods on Buyer's behalf against rail / road / air / sea risks, thefts, pilferage, non delivery and strike, riot and civil commotion including breakage and consequent leakage, wherever applicable from the time they leave BKL's godown until their arrival at the destination. The cost of insurance is to be paid by the Buyer over and above the Contract price. In the event of any insurance claim, all formalities connected therewith will be carried out by the Buyer. Any shortfall, in the loss and insurance claim received, shall be to the account of the Buyer. The transit insurance cover will lapse on the date of the arrival of the Goods at destination.

**16. ORDER CANCELLATION**

Order received and acknowledged by BKL shall not be subject to cancellation either wholly or partly for any reason whatsoever without BKL's prior written consent. BKL retains the right to cancel the Contract in case the Buyer does not fulfil any/all of its obligations under the Contract.

**17. WARRANTY**

The warranty period for Goods (other than spare parts and accessories, if any), shall be for a period of 12 (twelve) months only, from the date of delivery, for faulty material and workmanship. Any manufacturing defect found during the warranty period will be made good by BKL free of charge to the Buyer by repair or replacement at BKL's option. The title in the defective Goods/parts/components shall pass to BKL as soon as BKL accepts the complaint.

Defects resulting from unsuitable or improper use, improper installation by the Buyer or by third parties, natural wear and tear, negligent treatment, use of unsuitable means of operation, improper storage and climatic, electrochemical or electrical influences shall be excluded from warranty. The warranty also does not cover normal wear and tear, parts required for routine maintenance, consumables, all electrical and electronic components. The warranty shall be ineffective and inoperative in the event the Buyer fails to carry out regular preventive maintenance of the Goods or the Buyer uses raw materials and/or other duties not in accordance with the required specifications or the Buyer does not follow the operating procedures and instructions prescribed by BKI. It will also become inoperative for the complete scope if any repairs, replacements and/or modifications are carried out by the Buyer without BKI's prior written approval. The warranty does not extend to consequential or indirect damages or losses. This warranty is given in lieu of and excludes any conditions of warranty, statutory or otherwise, not herein expressly set out.

#### 18. LIMITATION OF LIABILITIES

BKI is not liable for any consequential or indirect damages, losses, costs, expenses of whatsoever nature claimed by the Buyer and / or any third parties. BKI shall not be responsible for any loss/damage including but not limited to loss/damage to Goods or to property(ies) of the Buyer / any third party or injury to employees of Buyer or to any third party.

Notwithstanding anything contained herein, the total maximum liability of BKI under a Contract is limited to 10% of the basic Order value (i.e. excluding taxes, duties etc.) of the Contract.

#### 19. GENERAL LIEN

BKI shall be entitled to a general lien on the Goods in its possession (or not in possession) under each Contract for all monies for the time being due to it by the Buyer, both under the same Contract and/or any other account and shall also be entitled to apply any monies in its hands against any Contract with the Buyer to amounts due to it from the Buyer under any other Contract or Contracts till the time BKI receives full payment of the Order value. Notwithstanding anything contained herein, BKI shall have rights of unpaid seller.

#### 20. BOUGHT-OUT ITEMS

When the Buyer specifies any particular make of bought-out components, BKI shall not be held responsible for the quality and performance of the same or for any delay in delivery of the bought-out components. Non-delivery of such components shall not delay payment for Goods dispatched except to the extent of the cost of items not delivered. Where the components supplied are not manufactured by BKI, the Buyer is entitled only to the benefit of any warranty and / or guarantee given to BKI by the manufacturers in respect of the said components.

#### 21. PACKING

Packing, if included in BKI's offer, whenever necessary, will be in accordance with BKI's standard practice.

#### 22. GOVERNMENT INTERFERENCE

If fulfilment of part or the whole of the Contract is or becomes affected by any regulations of any Government, all extra charges incurred or caused thereby will be to the Buyer's account, and any delay in delivery of the Goods for such reasons shall not be any valid ground for cancellation of the Contract by the Buyer or for refusal to take prompt delivery of the goods when offered for delivery. BKI has the option of cancelling the Contract if it appears that owing to Government's interference, delivery of the Goods specified cannot be made and no compensation and / or damages can be claimed by the Buyer in such a case.

#### 23. WAR RISK

In the event of a war (whether declared or otherwise) or any political upheavals or any warlike acts, all additional expenses incurred on account of freight, taxes, insurance or any other charges shall be borne by the Buyer. In such cases, BKI may at its own discretion cancel the Order and no compensation and / or damages can be claimed by the Buyer.

#### 24. FORCE MAJEURE

Buyer shall not be entitled to take objection or make any claim, if manufacture or supply or shipment or transport or delivery of Goods is prevented or hindered or delayed by any shortage of material, indigenous or imported, port congestion, strike, lockout, other labour unrest, disorganization of labour or of transport, riot, civil commotion, accident at works, break-down of machinery, power cuts, inevitable or unforeseen events, embargo, restraint by State, force majeure, act of God, frost, fire, storm, tempest, flood, earthquake or any other cause of whatsoever nature beyond BKI's control.

#### 25. CONTRACTUAL OBLIGATIONS

Notwithstanding anything stated or implied to the contrary in conversation and or correspondence relating thereto, BKI's and Buyer's mutual Contractual obligations in respect of the Contract are strictly limited to what is written and printed in this document. Amendments, if any, to the terms herein are to be expressly agreed to in writing by BKI in order to be valid. BKI is also not liable for indirect or consequential damages or losses of whatsoever nature arising out of any breach of Contract.

#### 26. DRAWINGS, PROCESS KNOWHOW AND OTHER TECHNICAL INFORMATION / DOCUMENTS

Any drawings and/or process know-how and/or other technical information/documents provided by BKI to the Buyer in connection with the offer and/or execution of the Contract shall be deemed to have been given only for operation of the Goods and shall not be used to any other purpose. BKI retains with itself all proprietary rights and copy rights, patents, especially rights with respect to reproduction and distribution of all such information/ documents. The Buyer acknowledges that the products of BKI are protected against imitation and copy by patent rights and other intellectual property rights. The infringement of these rights is liable to criminal prosecution and will result in claims from BKI for damages and injunctive relief.

If the Goods are manufactured based on drawings, samples or other information provided by the Buyer and involves a breach of third party rights, the Buyer shall indemnify BKI, its principals and Group companies against all claims made by the third party.

#### 27. SUB-CONTRACTORS

BKI reserves the right to appoint sub-contractors for any part of the work.

#### 28. CONFIDENTIALITY

All information provided by BKI to the Buyer in any form in connection with the Quotation and/or execution of the Contract shall be deemed as Confidential Information. Buyer agrees to keep all such Confidential Information as secret and not disclose to any third party. Buyer is allowed to disclose such Confidential Information to its employees on need to know basis. All Confidential Information disclosed under / in connection with Quotation and/or execution of Contract to the Buyer shall remain, at all times, the exclusive property of BKI.

#### 29. CUMULATIVE RIGHTS

Notwithstanding anything contained in the Contract, all remedies set forth in GTC shall be cumulative and in addition to and not in lieu of any other remedies available to BKI at law, in equity or otherwise and may be enforced concurrently or from time to time.

#### 30. JURISDICTION

All questions, disputes or differences whatsoever which may at any time arise between the parties hereto relating to any Contract and whether as to construction or otherwise shall be governed by the Indian laws and the place of Jurisdiction shall exclusively be Pune, which is located in the state of Maharashtra, India.

#### ADDITIONAL TERMS AND CONDITIONS FOR ERECTION AND COMMISSIONING OF GOODS

##### 1. SERVICES OFFERED

BKI can depute its engineer for supervision of erection and commissioning of the supplied Goods at extra cost. These services will include supervision of:

- Decrating, aligning, fixing to foundations, placing on foundations
- Connecting to pipelines and pipeline installation
- Connecting to electricals and electrical installation
- Starting up and commissioning

BKI's obligation to perform above services is valid on the following conditions and presumptions:

- The building and foundations must be ready in all respects for installation when BKI's engineer arrives.
- Foundation must have been made as per BKI's /manufacturer's drawings.
- All labour (skilled, semi-skilled and un-skilled) with necessary tools and tackles shall be provided to BKI's engineer free of cost. BKI shall not be responsible for (i) any loss or damage done to Goods or any property of Buyer or of any third party, or (ii) injury to any employee of Buyer or any third person/s, due to acts of Labours provided by the Buyer.
- All floor drainage must have been made / installed
- Lockable safe storage space for the storage of machinery, equipment, tools and spare parts must be provided free of cost.
- Office room with telephone must be made available for BKI's use, also telex / fax / internet / email facility, if available, free of cost.
- Water, electric power for connection of welding machines, drilling machines, etc. and other utilities as required must be made available, free of cost, within the building where erection is to take place. These facilities shall continue to be available till the erection and commissioning of the Goods is completed.
- For starting up, all processing materials and utilities like water, steam, power, etc. should be supplied free of cost.
- Buyer shall in advance furnish to BKI detailed floor plan of the factory/place of Buyer where Goods are to be erected and commissioned.

##### 2. EXCLUSIONS

BKI shall not be responsible for the following activities:

- All civil works, masonry, foundation, excavation, refilling, grouting, making holes in wall ceiling etc. and plastering of insulated surfaces
- All labour, tools and tackles, material handling equipment, storage etc.
- Any other items not specifically mentioned in the equipment specification.

The quoted price will not be valid if the erection and commissioning of the Goods cannot be taken up within the Contracted time or having been started cannot be continued further for no fault of BKI.

##### 3. SITE FACILITIES

BKI will not start the supervision work unless the building, equipment foundation is ready, all equipment / Goods to be installed are made freely available at site and facilities like, labour, tools and tackles, electric power, water, steam and other essential utilities are made available at site. The Buyer should also provide free decent living accommodation for BKI's crew from commencement of erection till the completion of erection and commissioning.

##### 4. IDLE TIME

In case BKI's personnel are not able to proceed with their work due to non-availability of necessary infra-structure and facilities from Buyer's side, additional charges towards idle time, re-deputation of BKI's personnel will have to be borne by Buyer.

##### 5. SITE WORKING HOURS

The normal working hours for BKI personnel will be 0900 hrs to 1800 hrs (including 1 hour lunch break) from Monday to Friday excluding national holidays. The Buyer shall permit working for BKI's personnel beyond the normal working hours, if deemed necessary by BKI's personnel. In case, the Buyer requests BKI's personnel for working beyond normal working hours, the same shall be at the discretion of BKI's personnel. All work beyond the normal working hours will attract overtime charges which will be payable by the Buyer. Buyer will obtain and arrange all necessary permissions / approvals, if required, in this connection.

##### 6. APPROVAL/REGISTRATION

Any Government or statutory or other approval and / or registration of Goods required shall be undertaken by and be the responsibility of the Buyer.

##### 7. RECONDITIONING OF GOODS

Expenses, if any, on reconditioning, repair or overhaul of Goods stored improperly and/or for long periods and/or damaged due to mishandling or any other reason, shall be borne and paid by the Buyer. BKI shall be the sole judge to decide whether damage or mishandling has been done.

##### 8. TRAINING

The Buyer will provide necessary staff to be trained by BKI for operating the Goods. Any such training will be imparted only during the period of erection and commissioning for duration as decided by BKI. The training shall be conducted in English language only.

##### 9. SURPLUS MATERIAL

BKI shall be entitled to take away any material/unused parts of Goods/tools brought by it, after completion of erection and commissioning.

##### 10. INSURANCE

Erection insurance covering risk associated with/in storage and installation of Goods will be arranged by Buyer at its cost.

##### 11. COMMISSIONING

On advance intimation of seven days, necessary labour, tools & tackles, raw materials, services, packing materials etc. required to commission the Goods are to be provided free by the Buyer.

##### 12. TAKEOVER

BKI's decision regarding completion of erection and commissioning shall be final. BKI shall give erection and commissioning report to Buyer immediately after erection and commissioning is completed and the Buyer no later than 5 (five) calendar days from its submission shall sign on the said Report. Should the Buyer refuse to sign the said Report, the Buyer shall so notify BKI in writing by substantiating the non-conformities within the same 5 (five) days period of time. Should the Buyer fail to sign the Report without notifying BKI as per above, the said Report signed by BKI shall then have the same value and effect as if both parties have signed it. After the completion of erection and commissioning, the Buyer will have to make arrangements to take over the Goods from BKI's crew, failing which BKI will be at the liberty to withdraw its crew from site. The Buyer is expected to put the Goods to commercial use only after settling all the dues of BKI. BKI's warranty of the Goods will be inoperative if the Goods are put to use without formal taking over.

##### 13. SUB-CONTRACTORS

BKI reserves the right to appoint sub-contractors for any part of the work.

##### 14. FORCE MAJEURE

BKI's rendering of these Services is subject to force majeure contingencies and BKI shall not be responsible for any delays which are due to circumstances beyond its control.

##### 15. COMPLIANCES OF LAWS

Buyer shall be solely responsible for all compliances including but not limited to payment of wages, payment of Provident Fund and employment benefits where Buyer has provided Labours for erection and commissioning.